THE

GREAT CONTEMPT CASE

COMPILED

BY

RAM CHANDRA PALIT.

CALCUTTA:

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1883.

THE GREAT CONTEMPT CASE.

May 2nd, 1883.

THE BENGALEE NEWSPAPER AND THE HIGH COURT.

On resuming his seat in the High Court yesterday (Wednesday May 2nd 1883), after lunch the Hon'ble Justice Norris said :—"My attention has been called to an article, in the *Bengalee* newspaper of 28th April 1883, page 199. The article is as follows :—

The Judges of the High Court have hitherto commanded the universal respect of the communtity. Of course, they have often erred, and have often grievously failed in the performance of their duties. But their errors have hardly ever been due to impulsiveness or to the neglect of the commonest considerations of prudence or decency. We have now, however, amongst us a Judge, who, if he does not actually recall to mind the days of Jeffreys and Scroggs, has certainly done enough, within the short time that he has filled the High Court Bench, to show how unworthy he is of his high office, and how by nature he is unfitted to maintain those traditions of dignity which are inseparable from the office of the Judge of the highest Court in the land. From time to time we have in these columns adverted to the proceedings of Mr. Justice Norris. But the climax has now been reached, and we venture to call attention to the facts, as they have been reported in the columns of a contemporary. The *Brahmo Public Opinion* is our authority, and the facts stated are as follows :—"Mr. Justice Norris is determined to set the Hooghly on fire. The last act of *zubberdusti* on his Lordship's part was the bringing of a *Saligram*, a stone idol, into Court for identification. There have been very many cases both in the late Supreme Court and the present High Court of Calcutta regarding the custody of Hindoo idols, but the presiding deity of a Hindoo household has never before this had the honour of being dragged into Court. Our Calcutta Daniel looked at the idol and said it could not be a hundred years old. So Mr. Justice Norris is not only versed in Law and Medicine, but is also a connoisseur of Hindoo idols. It is difficult to say what he is not. Whether the orthodox Hindoos of Calcutta will tamely submit to their family-idols being dragged into Court is a matter for them to decide, but it does seem to us that some public steps should be taken to put a quietus to the wild eccentricities of this young and raw Dispenser of Justice."

"What are we to think of a Judge who is so ignorant of the feelings of the people and so disrespectful to their most cherished convictions, as to drag into Court, and then to inspect an object of worship which only Brahmins are allowed to approach, after having purified themselves according to the forms of their religion? Will the Government of India take no notice of such a proceeding? The religious feelings of the people have always been an object of tender care with the Supreme Government. Here, however, we have a Judge who, in the name of justice, sets these feelings at defiance, and commits what amounts to an act of sacrilege in the estimation of pious Hindoos. We venture to call the attention of the Government to the facts here stated, and we have no doubt due notice will be taken of the conduct of the Judge."

"The account here given of what took place in Court on the day in question is absolutely and entirely not only inaccurate but untrue—untrue in letter, and untrue in spirit. What happened was this. It became necessary in the course of a certain procedure, or at any rate expedient, to ascertain the identity of a certain Hindoo deity. One of the learned Counsel (in the case applied that the idol might be brought into Court, and the other learned Counsel) assented to that proposition. I took pains to enquire of the learned Counsel themselves, and also from the Brahmin interpreter of the Court whether if such a course was pursued, the feeling of orthodox Hindoos would be outraged. I was told in reply that the idol could not be brought into Court, because there was coir matting on the floor, but it might be left in the corridor, and this was accordingly done. I consulted to the best of my ability the authority I thought most capable of giving opinion, an interpreter of the Court of long standing, universally respected, and himself of the highest caste in the country. With regard to the criticism I abstain from making any observations. All I can say is that the article is a gross contempt of Court, and I direct that a rule issue calling on the editor, Babu Ram Kumar Dey, and on the proprietor, Babu Surendra Nath Banerji, to appear on Friday at eleven o'clock, and to show cause why they should not be committed to the Presidency Jail for contempt of Court. I will communicate with the Chief Justice and ask him to make arrangements for a full Court to hear the application."

THE PAPERS IN THE CASE.

THE AFFIDAVIT OF MR. FINK.

"I, W. R. Fink, make oath and say as follows, that is to say— 1st, I was present in the Court presided over by the Hon'ble Mr. Justice Norris on Thursday the 19th April last, when cause was shewn against a rule issued in suit No. 527 of 1882, in which Kasinath Dass was plaintiff and Sreemati Suvedra Debi and others were defendants and

which suit is still pending and undetermined, calling upon the defendant Jaggarnath Dass Khettry to show cause why he should not be committed to prison for contempt of the Hon'ble Court in disobeying an order directing him forthwith to restore the Family Thakoor Bulkissenjee with his ornaments to his proper place. 2nd,—Mr. F. A. Apcar Barrister-at-Law appeared to shew cause against the said rule and amongst other affidavits, read the affidavit of Buttoknath Pundit, Bara-Bazar, wherein the deponent stated that he had the Thakoor in question in his possession at a Mandir on the Strand Road, and it was stated by the Counsel that it could be produced in Court, and the said Mr. Apcar thereupon applied that Buttoknath Pundit should be sent for and directed to produce the Thakoor in Court to which Mr. R. Allen, Counsel for the plaintiffs, assented. His Lordship Mr. Justice Norris thereupon asked the Counsel on both sides whether the production of the Thakoor in Court would be contrary to the religious scruples of Hindoos, and on this Counsel referred to the native attorneys who were respectively instructing them and stated that it would not. 3rd—His Lordship then inquired from a man who was referred to as Burmon and whose name was stated to be Gouree Kanta Burmon, who appeared to me to be an agent of the plaintiff and was instructing the plaintiff's solicitors, whether in his opinion the Thakoor could be brought into Court, and the answer made was that it could be brought as far as the corridor but not into the Court-room itself, the reason assigned being that the Court-room was matted with a coir matting. 4th—His Lordship then sent for Beni Madhab Mukerji one of the Court Interpreters and made the same inquiry of him. The Babu upon being asked desired to know whether the Thakoor was a Salgiram, and on being informed by the Counsel in the case after reference to their clients that it was a Salgiram, he stated that it could not be brought into Court on account of the matting but that it could be brought as far as the corridor and kept there. 5th—Thereupon His Lordship acceded to the application and granted a subpœna *ducestecum* directed to the said Buttock Nath Pundit to produce the said Thakoor forthwith. It was then suggested that the subpœna should be entrusted for service to a Brahmin Officer of the Sheriff, but His Lordship directed that the Interpreter himself being a high caste Brahmin and a well-known and trusted officer of the Court, should accompany the attorney's clerk and see to the service of the subpœna, and the further hearing of the rule was adjourned till 2-30 P.M., of the same day. 6th—At the last mentioned hour the said Buttock Nath Pundit attended in the corridor of the Court with the Thakoor and his Lordship was informed that the Thakoor produced was not the real Thakoor, the latter being 100 years old and the one produced bearing the marks of the chisel, and was asked by Counsel to inspect it. Whereupon His Lordship left the Bench and proceeded with the counsel and attorneys for both sides to the corridor where the Thakoor was placed in a cushion or covering in the parapet in charge of the said Buttock Nath Pundit and inspected the said Thakoor, and Mr. Apcar

obtained the leave of the Court to examine the said Buttock Nath Pundit as a witness which was done. After his examination the said Baney Madhub Mukerji was also examined. Mr. Apcar then addressed the Court and applied to be allowed to examine the plaintiff Kasi Nath Dass which was done and upon this the Court made the rule absolute."

The affidavit of Beni Madhab Mukerji, Interpreter.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

In the matter of RAM KUMAR DEY and SURENDRA NATH BANERJI.

I Beni Madhab Mukerji, one of the interpreters of this Honourable Court residing at Howrah in Zillah Hooghly, do solemnly affirm and say as follows :—

1. That I have read the affidavit of William Robert Fink, Assistant Registrar and Officiating chief clerk of this Honourable Court made in the above matter and sworn on the 1st day of May instant.

2. That paragraphs 4, 5 and 6 thereof are true to my knowledge· I having been in the Court presided over by the Honourable Mr. Justice Norris when the matters therein stated as having occurred did occur.

3. That I accompanied a clerk of Babu Nemie Churn Bose to Bara Bazar and was present when the subpœna to produce the Thakoor was served on Buttock Nath Pundit to whom I explained the nature of the subpœna and he brought the Thakoor on foot to this Honourable Court. I having pointed out to him that it would not be proper for him to come in the carriage in which I was, as it was being driven by a Mahomedan.

The Rule.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

In the matter of Ram Kumar Dey, the Printer and Publisher and of Surendra Nath Banerji, the Editor of periodical work entitled the "Bengalee"	Upon reading an Office Copy of a declaration made by Ram Kumar Dey.

Under Section II. of Act XI. of 1835 of the Governor-General of India in Council and attested by the seal of this Court an affidavit of William Robert Fink sworn on the first day of May instant and an affidavit of Lancelot Edward Sanderson sworn on the first of May instant and an exhibit thereunto annexed and marked A being a copy of the said periodical work entitled "The Bengalee" of the Twenty-eighth day of April last and an affidavit of Henry Adams Adkin sworn on the first day of May instant and an affidavit of Beni Madhub Mukerji, affirmed this day all filed this day. It is ordered that Ram Kumar Dey the Printer and Publisher and Surendra Nath Banerji, the Editor of the said periodical work "The Bengalee" being served with this rule do attend in person and shew cause before this Court on Friday the Fourth day of May instant at the sitting of the Court, why they should not be committed or otherwise dealt with according to law for contempt of Court alleged to have been committed by them in having unlawfully published a certain article in the said periodical work "The Bengalee" of the Twenty-eighth day of April last containing certain contemptuous and defamatory matters of and concerning the Hon'ble John Freeman Norris one of the Judges of this Court.

Dated this second day of May in the year of our Lord one thousand eight hundred and eighty-three.

(Sd.) R. BELCHAMBERS,
Registrar.

HIGH COURT, ORIGINAL CIVIL JURISDICTION.

May 4th, 1883.

[Before the Hon'ble Chief Justice, the Hon'ble Mr. Justice Mitter, the Hon'ble Mr. Justice Cunningham, the Hon'ble Mr. Justice McDonell and the Hon'ble Mr. Justice Norris.]

In the matter of RAM KUMAR DEY and SURENDRA NATH BANERJI.

The rule issued in this case came on for argument this morning.

MR. BANERJI said :—May it please your Lordships, I am instructed on behalf of Ram Kumar Dey and Surendra Nath Banerji, to appear before your Lordships upon this occasion, and to state, on their behalf, that they are truly sorry for the strictures upon your Lordship, Mr. Justice Norris, contained in the issue of the *Bengalee* newspaper of the 28th April. I hold in my hands, my Lords, two affidavits made by these two persons, and think I shall best discharge the duty which I owe to them by proceeding at once to draw your Lordships' attention to those affidavits, and then saying a few words of my own in support of the apology which has been made, asking your Lordships to accept that apology and deal leniently with the defendants. The affidavit of Ram Kumar Dey is as follows :—

"I, Ram Kumar Dey," of No. 33, Neogi Pukur East Lane in the Town of Calcutta, contractor, solemnly affirm and say as follows :—

1st. That for the last two or three years I have, under a contract with the abovenamed Surendra Nath Banerji, by myself and others employed by me, composed, set up, and printed the periodical work called the *Bengalee*, of which I am known as the Printer and Publisher.

2nd. That I have no concern with any matter which appears in the said periodical work, and that I have no power to prevent any such matter passed by the said Surendra Nath Banerji appearing in the said periodical work.

3rd. That I am imperfectly acquainted with the English language, and though able to compose and set up works in English, I do not readily understand the sense and meaning of what I do compose and set up.

4th. That while composing and setting up the issue of the 28th day of April 1883 of the said periodical work, I had no knowledge whatsoever that it contained any matter contemptuous or defamatory of, or concerning, the Hon'ble John Freeman Norris, one of the Judges of this Hon'ble Court, or of any person or persons whomsoever, I say that even if I had such knowledge, I could not have prevented the same being published in the said periodical work, and all that I could have done would have been to sever my connection with the said periodical work.

5th. That I am extremely sorry that any matter deemed by this Hon'ble Court to be contemptuous and defamatory of, and concerning, the said Hon'ble John Freeman Norris should have appeared in the said periodical work, and so far as I had any hand in the publication thereof, I apologize to the said learned Judge and to this Hon'ble Court.

That, under the circumstances aforesaid, I submit myself to the favourable consideration of this Hon'ble Court.

The affidavit of Surendra Nath Banerji is as follows :—

I, Surendra Nath Banerji, of No. 33, Neogi Pukur East Lane in the Town of Calcutta, at present residing at Manirampore in the district of the Twenty-four Parganas, inhabitant, solemnly affirm and say as follows :—

1st. That on Thursday, the 3rd day of May instant, I was served with a rule issued by this Honourable Court in this matter on the day previous, calling upon the abovenamed Ram Kumar Dey, as the Printer and Publisher, and myself as the Editor, of the periodical work, the *Bengalee*, to show cause before this Honourable Court on Friday, the 4th day of May instant, at the sitting of the Court, why we should not be committed, or otherwise dealt with according to law, for contempt of Court alleged to have been committed by us in having unlawfully

published a certain article in the said periodical work, the *Bengalee*, of the 28th day of April last, containing certain contemptuous and defamatory matters, of and concerning the Honourable John Freeman Norris, one of the Judges of this Honourable Court.

2nd. That, upon being served with the said rule, I bespoke and thereafter obtained office copies of the grounds upon which the said rule is based, which grounds I have perused.

3rd. That I admit that, as is stated in the affidavit of Mr. Henry Adam Adkins, Officiating Solicitor to the Government of India, the abovenamed Ram Kumar Dey is the Printer and Publisher of the said periodical work, the *Bengalee*, and I am the Proprietor and Editor thereof.

4th. That the said periodical work is made up entirely under my superintendence, and that the said Ram Kumar Dey, who is but indifferently acquainted with the English language, has no authority over any editorial matter appearing in the said periodical work, and further he could not if he wished so to do, prevent any article or paragraph appearing therein.

5th. That the issue of the said periodical work of the said 28th day of April 1883 was made up and published entirely on my responsibility and to the best of my knowledge, information and belief, the said Ram Kumar Dey did not read anything contained therein in the editorial columns before the publication thereof.

6th. I further say that, except as an Honourable and learned Judge of this Honourable Court, I have no knowledge whatsoever of the said Hon'ble John Freeman Norris, and that in writing and publishing what I did in connection with His Lordship, I acted entirely *bonafide*, and, as I believed, in the interests of the public good.

7th. That there appeared in the said issue of the 28th day of April 1883 two paragraphs in connection with the said Honourable John Freeman Norris, one at page 194 under the heading of "News and Notes" of Tuesday, the 24th of April 1883, and the other at page 199 amongst the editorial notes. The said two prargraphs are as follows. [Here followed the articles previously quoted by us and on which the rule was issued.]

8th. That the *Brahmo Public Opinion* referred to in the said paragraph is a periodical work, published in Calcutta every Thursday, and is believed by the public, and I believe it, to be under the editorship of a gentleman practising as an attorney of this Honourable Court.

9th. That the matter of complaint made in the said first paragraph appeared in the said *Brahmo Public Opinion*, to the best of my knowledge, information and belief, in its issue of Thursday, the 19th of April 1883, and no contradiction thereof, nor any explanation thereof, appeared either in the said *Brahmo Public Opinion*, or to

the best of my knowledge, information and belief, in any other newspaper.

10th. That the matter of complaint made in the said second paragraph appeared in the said ***Brahmo Public Opinion*** in its issue of the 26th day of April 1883, and no explanation or contradiction thereof appeared in that paper or any other newspaper before the publication of the said issue of the said periodical work.

11th. That I honestly believed the statements in the said ***Brahmo Public Opinion*** to be true, and the paragraphs aforesaid, which were both written by me, were so written under such belief and under the sense of public duty that conduct such as was imputed to the said Honourable John Freeman Norris should be brought to the notice of the public and censured.

12th. That from the affidavits of Mr. William Robert Fink, the Assistant Registrar, and the Officiating Chief Clerk of this Hon'ble Court, and of Babu Beni Madhab Mukerji, one of the Interpreters of this Hon'ble Court, the truth of which I entirely and unhesitatingly accept, I now find that the statements contained in the said ***Brahmo Public Opinion*** relating to the production of the said Saligram in Court were inaccurate and misleading, and that the said Hon'ble John Freeman Norris, instead of acting in a ***zubburdusti*** manner as alleged, acted under pressure from the parties, who are both Hindoos, apparently against his own inclination.

13th. That I have received contradictory statement with regard to the statements contained in the said first paragraph, some asserting that they are inaccurate and misleading, others maintaining the contrary; and I have not been able to ascertain which of these contradictory statements represent the truth.

14th. I say most emphatically that had I known, or had any reason to believe, that the statements of the ***Brahmo Public Opinion*** aforesaid were in any respect inaccurate. I would not have made the observations I have, and I am truly sorry that I was misled into making them, and I withdraw them unreservedly; but I repeat that my observations were made perfectly ***bona fide*** and without any motive of any description whatsoever other than the motive to promote public good.

15th. That the circumstances of British India are such that this Honourable Court and the other High Courts in the other Presidencies are looked upon, and I believe justly looked upon, as the staunchest, the most upright and the most impartial upholders of the just rights and privileges of all sections of the community, and any action on the part of any Honourable and learned Judge of these Honourable Courts tending to show the least disregard of such rights and privileges is viewed with great alarm by the community, and I conceive that it is the duty of all journalists to maintain that no such disregard is shewn.

16th. That I express my deep regret at having unwillingly endeavoured to cast an undeserved slur upon the said Honourable John Freeman Norris, and I place myself unreservedly in the hands of this Honourable Court, being satisfied that the apology which is hereinbefore contained is, under the circumstances, due from me to the Honourable John Freeman Norris and this Honourable Court, and I further submit myself to the favourable and indulgent consideration of this Honourable Court.

Mr. *Bonnerji* continued :—I have not read the whole of the affidavit but so far it contains an unreserved apology which, I venture to, and am instructed to make on behalf of Surendra Nath Banerji, I may say for myself I have great pleasure in making that apology on his behalf, because I am personally acquainted with most of the facts of the case, regarding which these strictures have been made upon his Lordship Mr. Justice Norris. I know that the facts, as given in the *Brahmo Public Opinion*, were wholly inaccurate and incorrect, and that the slur cast upon Mr. Justice Norris was wholly undeserved. In addition to the apology which the affidavit contains, it also contains a prayer to your Lordships which I shall read to your Lordships, and then leave it without any further comments from me, because I am not prepared to support that prayer myself.

The Chief Justice :—I don't know if, before this article was written, Babu Surendra Nath Banerji had any information which justified him in saying what he did say, or that he ever made any enquiries as to whether what he did say was true.

Mr. Bonnerji :—What he said was that he accepted the statement which appeared in the *Brahmo Public Opinion* as correct, and he believed it to be entirely correct, and he gives as reasons for that, that the *Brahmo Public Opinion* is conducted by a gentleman who is connected with this Court, and who would be more likely to know these facts than any outsider; and therefore he implies in this affidavit that he entirely accepted those statements as true. Finding them to be untrue, he withdraws them unreservedly and wholly.

The Chief Justice :—I think that is no excuse in law for Babu Surendra Nath Banerji.

Mr. Bonnerji :—That is all I can put forward before your Lordships, if it had been any justification—

The Chief Justice :—I shall be very glad to hear what you have to state further Mr. Bonnerji.

Mr. Bonnerji :—I have little to add to what I have said and to what is contained in these affidavits. The last two paragraphs in the affidavit contain a prayer :—

17th. That I am advised that this Honourable Court has no jurisdiction to issue the said rule, or to deal with me or the said Ram Kumar Dey summarily; but the question, I am also advised, is one of

extreme difficulty, and I know it to be one of great public importance, and will require much time and attention to be dealt with as in my judgment, it should be dealt with.

18th. That the said rule was served upon me at half-past eleven o'clock, and I received the said grounds at about a quarter after 2 P. M., and though my attorney and I have made our best endeavours to secure the services of Counsel learned in the law to appear for me and argue the said question, I have not succeeded in getting one prepared to do so this morning and I humbly pray that time may be granted to me sufficient to enable me to have the said question argued; and I make this prayer entirely subject to the apology which I have made and without in any way detracting from or weakening the same in any particular whatever. Solemnly affirmed.

As regard this prayer, I leave it entirely to your Lordships.

The Chief Justice:—As I understand it, your client is prepared to make no defence, and has asked you to make this affidavit in extenuation of the contempt. He is not prepared to make any defence, and is now asking for an adjournment.

Mr. Bonnerji—I am not asking for an adjournment. As I have said, I am not prepared to support that prayer, nor, if the prayer were granted, should I be in a position to argue it, and if I were in a position to argue it, I should not do so.

The Chief Justice:—I consider you the mouth-piece of these gentlemen, and that last portion of the affidavit shows that the defendants intended to dispute the jurisdiction of the Court if they had not been advised by you not to do so.

Mr. Bonnerji:—The matter stands precisely as in the affidavit. But, as I said before, I am not prepared to support the prayer in that portion of the affidavit, and even if time were granted by your Lordships, I should not be in a position to argue the question, and if I were in a position to do so, I should not. But on the first part of the matter, as your Lordships have heard my client places himself unreservedly in the hands of the Court. I submit that there is, as your Lordships will perceive some distinction—perhaps it is no defence in law—between the two cases, the case of Ram Kumar Dey and that of Surendra Nath Banerji. Ram Kumar Dey has erred in ignorance, and is a subordinate agent; and even if he had wished, he could not possibly have prevented the appearance of these matters in the newspaper. Therefore I shall ask your Lordships to deal with him as leniently as may appear to your Lordships just and proper. Babu Surendra Nath Banerji has no doubt written the article, and he has taken upon himself the entire responsibility of having done so. But as he states, and I have no hesitation in asking your Lordships to believe it was written in all honesty and in the belief that what was contained in the *Brahmo Public Opinion* was true and could be relied upon.

Mr. Justice Norris:—But there could be no necessity in all honesty to liken any Judge of this Court to Scroggs and Jeffreys. There is no extenuation in the affidavit for having made any reference of that sort, and no expression of regret for having done so.

Mr. Bonnerji:—I beg your Lordships to remember that the affidavits were prepared in a great hurry. They have been drafted and engrossed by the attorney himself, and there has been no time to deal with the case with that feeling which a matter of this sort certainly deserved; and I would therefore ask your Lordships to deal with the whole matter leniently. Babu Surendra Nath Banerji regrets extremely that he was betrayed into saying anything which no doubt would justly wound the feelings and sensibilities of any person, and particularly one of your Lordships, sitting as one of the Judges of this Court.

Mr. Justice Norris:—I desire to remove the apprehension that any action has been taken because my feelings were wounded; action was taken because the whole Court was brought into contempt.

Mr. Bonnerji:—I do not mean that action was taken because your Lordships' feelings were wounded, but because in the opinion of your Lordships the Court was brought into contempt. My client is extremely sorry for having made that allusion, and has done, under the circumstances, all that lies in his power, namely, to place himself unreservedly in your Lordships' hands and to express his regret and submit his apology for what he had done. He holds a very prominent position in Calcutta; he is an Honourary Magistrate and a Municipal Commissioner, and is connected with various educational institutions in this city. Under these circumstances I leave the matter in your Lordships' hands, praying your Lordships to deal as leniently as, under the circumstances, your Lordships may think proper.

The Chief Justice:—We will consider the affidavits and give judgment in this matter to-morrow morning at 11 A. M.; but in the meantime Babu Surendra Nath Banerji and Ram Kumar Dey must find security for their appearance to-morrow in the sum of Rs. 5,000 each.

Mr. Bonnerji:—In considering these affidavits I trust your Lordships will not lose sight of the fact of the great hurry with which the affidavits have been prepared, and your Lordships will be pleased to supplement the affidavits with what I have openly and publicly avowed on behalf of my clients.

We understand that Babu Jogesh Chandra Datta, a Municipal Commissioner, and Ananda Mohan Bose, Barrister-at-Law, signed the bail bonds for the two defendants, Babus Surendra Nath Banerji and Ram Kumar Dey.—*Englishman.*

May 5th, 1883.

THE JUDGMENT.

On Saturday, it was anticipated that, as their Lordships would deliver judgment, and pass sentence, a serious disturbance would occur, and precautions were taken to prevent it. From 10 o'clock in the morning a large force of the native constabulary, numbering over a hundred and eighty men, with about fifty European constables, inspectors, and superintendents were marched to the High Court. All the various public entrance gates were closed with the exception of one main gate at which were stationed Superintendent Lamb, Inspector Costello, Inspector Driscoll, and a body of European constables. Superintendents Hogg and Johnson and some inspectors, guarded the the private entrances for the Judges, and the native police kept the carriage-way clear. No carriages were allowed to drive under the porticoes; all occupants, whether the Advocate-General, Standing Counsel, barristers and attorneys, had to announce their calling, (if not known to the police), alight outside, and then obtain permission to enter. There were about three to four thousand Europeans and natives crowding the thoroughfares of Old Post Office Street, the south road by the High Court, and the Strand-Road gates of that building, while double and treble lines of private conveyances and hackney carriages (the latter with a number of sight-seers on the tops as on a race-course) filling the sides of these roads. None but those who had business to transact were permitted to enter the precincts of the building, while those who were refused admittance were loud in their protests against refusal of admission to a public Court of justice. Even the accused, Babu Surendra Nath Banerji, when he arrived with his solicitor, and was warmly cheered by the mob, had some difficulty in passing in his servant, who was only admitted when his master explained that his servant carried a packet of bank-notes to pay what he anticipated would be a fine. And from what could be gathered from the crowd outside, they seemed to share with him in this belief, as they refused to believe that the editor of a newspaper, a man so highly respected as Babu Surendra Nath, would ever be subjected to the indignity of imprisonment after having apologized for writing in a public newspaper in good faith matter which constituted a contempt of Court, and which they (the natives) felt confident the Judges would not deal with so harshly after his having pleaded for mercy.

Notwithstanding the exclusive nature of the admission, yet there was quite a crowded gathering in the Court, at least an hour before the Judges entered. From the learned Advocate-General down to the keen-looking attorneys and vakils, nearly every member of the bar was present, and to these, when we add the majority of the leading members of the Chamber of Commerce, the trades, the pleaders of the Small Cause Court and attorneys' clerks, there was nothing short of a crowded gathering in the room. The accused entered, and took a

seat next to his Counsel. He seemed anxious, but still, when he conversed, his countenance showed a hopeful anticipation that the Judges had favourably accepted his apology, and would impose a fine, and a note of warning to his brethern of the native press. Not so, however, some of the knowing barristers. They scouted the idea of a fine, and feared that nothing short of six months would be the term of imprisonment meted out. The Judges, they said, would take into consideration that the accused ought to have known better. He was formerly a member of the Covenanted Civil Service; he was one of the ablest English scholars among the native community of India, and by the nature of his affidavit alone, the impression was that the offence had not only remained unatoned for, but was aggravated.

The Judges were not as punctual as they always are, for it was very nearly 12 o'clock when they took their seats on the Bench. The Hon'ble Justice Mitter sat to the right of the Chief Justice, having on his right again Mr. Justice MacDonnel. On the left of the Chief Justice were the Hon'ble Justices Cunningham and Norris. Below the Bench, and in the judges corridor, could be seen Justices Prinsep, Tottenham, and others watching the proceedings.

On their Lordships sitting, the Chief Justice at once proceeded to deliver judgment, and addressed Baboo Surendra Nath Banerji as follow :—

Baboo Surendra Nath Banerji,—You have been guilty of a gross contempt of this Court in publishing in the *Bengalee* newspaper, of which you are the editor, the article which is the subject of the rule.

We understand from your Counsel, Mr. Bonnerji, that whatever your orginal intention may have been, you now admit that you have been guilty of such contempt ; and you have submitted what professes to be an apology to the Court in the affidavit, which was read yesterday by your Counsel.

You have certainly acted wisely in not attempting to justify an act which you must be well aware is wholly unjustifiable, and your Counsel has also exercised a wise discretion in not insisting upon a point which, we observe, is suggested in your affidavit, that this Court had no power to institute these proceedings.

It is impossible that any reasonable man, who is acquainted with the real truth of the matter, can read the article in question, which you admit to have been composed and published by yourself, without seeing that it is a most scandalous and wholly indefensible attack upon Mr. Justice Norris.

You begin the article by accusing that learned Judge of neglecting, in the discharge of his judicial duties, the commonest considerations of prudence and decency. You go on to compare him with two of the most notoriously unrighteous judges that had disgraced the English Bench, and you denounce him to the Indian public as entirely un-

worthy of his high office, and unfitted by nature to maintain those traditions of dignity, which are inseparable from the position of a High Court Judge. As a climax to these accusations, you quote the following passage from the *Brahmo Public Opinion* reflecting upon the learned Judge's conduct in a paricular cause, which was then, and is now, pending in his Court :—

"Mr. Justice Norris is determined to set the Hooghly on fire. The last act of *zubburdusti* on his Lordship's part was the bringing of a *salgiram*, a stone idol, into Court for identification. There have been very many cases, both in the late Supreme Court and the present High Court of Calcutta, regarding the custody of Hindoo idols, but the presiding deity of a Hindoo household has never before this had the honour of being dragged into Court. Our Calcutta Daniel looked at the idol, and said it could not be a hundred years old. So Mr. Justice Norris is not only versed in law and medicine, but is also *connoisseur* of Hindoo idols. It is difficult to say what he is not. Whether the orthodox Hindoos of Calcutta will tamely submit to their family idols being dragged into Court, is a matter for them to decide, but it does seem to us that some public steps should be taken to put a quietus to the wild eccentricities of this young and raw dispenser of justice."

Upon the basis of that statement in the *Brahmo Public Opinion* without informing yourself in any way whether it was true for false, and without even making enquiry into the circumstances of the case, you proceed recklessly to comment upon the conduct of the Judge, and to hold him to public execration in the following language :—

"What are we to think of a Judge who is so ignorant of the feelings of the people and so disrespectful to their most cherished conviction, as to drag into Court and then to inspect an object of worship which only Brahmins are allowed to approach, after having purified themselves, according to the forms of their religion? Will the Government of India take no notice of such a proceeding? The religious feelings of the people have always been an object of tender care with the Supreme Government. Here, however, we have a Judge who, in the name of justice, sets these feelings at defiance, and commits what amounts to an act of sacrilege in the estimation of pious Hindoos. We venture to call the attention of the Government to the facts here stated, and we have no doubt due notice will be taken of the conduct of the Judge."

Now, so far from there being the least foundation for this tissue of abuse, it appears from the affidavits upon which the rule was issued (which are now admitted by yourself to be perfectly correct), that the account given in the *Brahmo Public Opinion* and your own comments upon it were wholly without foundation. The truth of the matter was this: In a case which was tried before the learned Judge, a question arose as to the identity of a certain *thakoor* or idol. It was necessary for the purpose of determining that question to ascertain

whether a particular *thakoor*, which was then in the custody of one Buttock Nath Pundit in Barabazar, was the family *thakoor* of certain parties to the suit. For the purpose of determining that question it was suggested by the Counsel on both sides that the *thakoor* should be brought into Court for the purpose of identification. Mr. Justice Norris hesitated to take that course until he had enquired from the attorneys on either side, who were Hindoos, whether there would be any objection to it. Their answer was that there would be none. His Lordship then further enquired from a person, named Gouri Kanta Burman, who was in Court and who was an agent of the plaintiff whether he saw any objection; and his answer was that the idol could not be brought into the Court itself, on account of the coir matting with which the floor was covered, but that it might be brought without objection into the corridor.

The learned Judge then, in order to satisfy himself still further, sent for the Court Interpreter, Baboo Beni Madhub Mukerji, who is an officer of great experience and a high caste Brahmin, and made the same enquiry of him. He asked whether the *thakoor* was a *salgiram*, and finding that it was, gave the same answer as Gouri Kanta namely,—that it could not be brought into Court on account of the matting, but it might with perfect propriety be brought into the corridor. Upon this, his Lordship granted the application, and a subpœna *duces tecum* was issued to Buttock Nath Pundit to produce the *thakoor*, the same day, and in order to ensure the orders of the Court being properly carried out, it was further ordered that the Interpreter himself should proceed with the officer to Buttock Nath Pundit's house (who was himself a Brahmin), and should see to the proper conveyance of the *thakoor* to the Court.

We have then the affidavit of Beni Madhub Mukerji himself who, after confirming the above facts, informs us that, in obedience to the order of the Court, the *thakoor* was duly conveyed into the corridor by himself and the pundit; and the learned Judge, attended by Counsel on both sides and the attorneys, left the Court, and went into the corridor for the purpose of inspecting it.

It seems, therefore, impossible for any one, however strict his religious views on such subjects may be, to say that Mr. Justice Norris did not take the utmost pains—in the first place, to ascertain whether the *thakoor* ought to be brought to the Court at all; and, in the next place, to provide that it should be brought with all due respect and propriety.

It may be perfectly true that European Judges, and more especially Barrister-Judges, are often imperfectly acquainted with the religious views and feelings of the Hindoo community; and the utmost they can do, when occasion arises, is to consult those who are best informed upon the subject, to be guided by their advice.

But we now understand from your own affidavit, as well as from your Counsel, Mr. Bonnerji, that you admit that the learned Judge did everything in his power to ascertain the truth of the matter, and to avoid giving the least offence to the religious feelings of your countrymen.

It, therefore, only remains for us to consider what punishment we ought to inflict upon you.

It is, indeed, a very lamentable thing, and I trust that your own countrymen will also be of that opinion, to find a gentleman of your position and attainments, who was once a member of the Covenanted Civil Service, and is now an Honourary Magistrate of this city, making use of his influence as a newspaper editor to vilify and bring into public contempt, without any justification whatever, a Judge of the High Court.

If the offence had been committed by any young, inexperienced man of no education, or knowledge of the world, or by a person in the position of Ram Kumar Dey, who stands beside you, we might ascribe it, in some degree at least, to ignorance or want of consideration. But you have had great educational advantages. You know, or should know, as well as any one, the duties and responsibilities of gentlemen connected with the Press. You profess in your affidavit to justify your offence by putting forward as the basis of your false charges against Mr. Justice Norris, a statement in the *Brahmo Public Opinion*, which you say you believed to be true, and upon which you considered yourself at liberty to enlarge and comment with extreme severity.

Moreover, whilst you profess to admit that your charges were totally false and unfounded, and made without any sort of enquiry on your part, you still maintain that you have made them "in perfect good faith, and in the interests of the public good."

Furthermore, you have made mention in your affidavit of another article, extracted from the *Brahmo Public Opinion*, which is also apparently intended to reflect upon Mr. Justice Norris, and the subject of which has nothing to do with the present proceeding. Your counsel, though invited to do so, has wholly failed to explain to the satisfaction of the Court, why that article was inserted, and you must have known perfectly well that the affidavits, upon which the rule was issued, were not directed to the subject of that article.

These matters in your affidavit, so far from extenuating your offence, appear to the Court to be an aggravation of it.

The Judges are at a loss to understand how a libel so gross could possibly have been inserted in your paper in good faith, and they find great difficulty in believing that a gentleman of your education and a newspaper editor could be so utterly ignorant of the law of libel, as to suppose that you were at liberty to publish these attacks upon the conduct and character of a High Court Judge, merely because you found them, though in a less virulent form, in another native newspaper.

The Court is quite willing to make some allowance for your affidavit having been drawn, as Your Counsel informed us was the case, in a hurry and without consideration. But they cannot look upon it, for the reason which I have just mentioned, as any extenuation of your offence.

We feel that it is absolutely necessary to vindicate and maintain the authority of the Court; and to guard against a repetition of the grave offence which you have committed, by imposing upon you—not a fine, which in your case would be a mere nominal penalty, but—such substantial punishment as may serve as a wholesome warning to yourself and others.

The Court's order is that you be imprisoned, on the Civil Side of the Presidency Jail, for the space of two months.

The majority of the Court regret that in determining the award of punishment, my brother Mitter's view should not be in accordance with theirs. We are, of course, fully aware of the precedents to which that learned Judge refers but, in the first place, we think the facts of those cases are different from the present; and, in the next place, we find ample precedent in England in cases of gross libel where a more severe punishment has been awarded.

We fail to see why persons, charged with contempt of Court for libel in a proceeding of this nature, should be subjected to a less severe punishment than if the proceeding had been by criminal information, or by the more ordinary process at the criminal sessions.

Had your affidavit disclosed a more honest and candid avowal of your guilt, without making mention of those matters which the Court cannot find to have been introduced for any useful purpose, or from any proper motive, they might have considered it sufficient, for the ends of justice, to have visited you with a more lenient punishment.

Ram Kumar Dey,—You have also been guilty of a contempt of this Court from having been the means, as the Printer and Publisher of the *Bengalee* newspaper, of circulating the article in question.

We are, of course, by no means prepared to say that, as a rule, the printer and publisher of a newspaper is not fully responsible, both civilly and criminally, for everything that is inserted in that paper. But we find in this instance not only from your own affidavit, but from that of Babu Surendra Nath Banerji who has very properly done his best to protect you, that you know the English language very imperfectly, and that you have evidently been the mere instrument of the Editor, under whose orders you acted.

We, therefore, think that you may with propriety be discharged.

Mitter, J., delivered the following judgment :—

I concur in the finding that both Ram Kumar Dey and Surendra Nath Banerji are guilty of contempt of Court. But after giving my

consideration to the question of the punishment that should be inflicted, I am unable to agree in the view of the majority of the Court. There have been in this Court two cases of a similar nature since its establishment. One is reported at page 79 of Hyde's Report. The other case was not reported in any authorized report, but is well known as Taylor's case. In both these cases at the first hearing of them, the persons charged with contempt did not admit the guilt. The matter was discussed fully, and after the Court had pronounced its decision that they were guilty, that suitable apologies were made.

In the case before us, the persons charged with contempt have at once admitted their guilt, and have expressed their deep regret at having unwillingly cast an undeserved slur upon a learned Judge of this Court.

In the first mentioned case, Sir Barnes Peacock, C. J., in delivering the judgment, said:—"Although the majority of the Judges were of opinion that both these gentlemen, *i. e.*, the persons charged with contempt, had acted in contempt of Court, they did not wish to visit the offence with any punishment. The Court would be content with an apology, nor need the apology be an abject one, but simply such as would convey the expression of their sorrow at having committed that which the Court considered to be contempt." In accordance with this expression of opinion, a suitable apology was made, and no punishment was inflicted.

In the other case, the sentence of the Court was that Mr. Taylor should stand committed for one month to the Civil Side of the Presisdency Jail, and that he should pay a fine of Rs. 500, and that he should be further imprisoned till the fine was paid.

Then Sir Barnes Peacock, C. J., referring to an apology which had been published by Mr. Taylor before the sentence was passed, said:—"If you think fit to add to the apology which you have already published (and it is for you to decide whether you can conscientiously do so or not), the Court is willing to mitigate the sentence. If, after what you have heard, you state that upon reflection you find that the charges which you made against Mr. Justice Dwarka Nath Mitter were unwarranted, and wholly without foundation, and that you are sorry for having made them, you may do so; and you may add, if you wish it, either that you did not intend to cast any reflection upon any of the other Judges, or that the reflection cast was unfounded, and if you publish that apology in the *Englishman*, you may apply on Monday the 3rd of May next, for your discharge on payment of the fine."

This sentence was passed on Saturday, the 24th April 1869, and on the 27th April following, Mr. Taylor, having made a suitable apology, was released, the remaining term of his imprisonment having been remitted.

I have gone into these details because it seems to me that in determining the amount of punishment to be inflicted on Surendra Nath Banerji, we should take these cases as our guide. The complexion of guilt in the case of Mr. Taylor is certainly not of a lighter character than that of Surendra Nath Banerji.

On the question of punishment, therefore, I should have been inclined to adopt the course which was adopted in these cases.

There was profound silence during the delivery of the two judgments, and it was not until after the Court rose, that those present expressed their opinions thereon. Some thought that Mr. Justice Mitter was only true to his creed: others that he had upset the other Judges by his protest: others that the sentence was too heavy; others again that it was too lenient: others again that the Viceroy, if appealed to, would exercise his prerogative of mercy, and release the prisoner. When the last mentioned opinion was advanced, a gentleman, evidently an Irishman (for he spoke with a strong brogue) at once proclaimed in a loud voice, "Then there will be a mutiny among the Europeans." The prisoner took the sentence calmly, and with the exception of once or twice, when iced water had to be given to him, he showed much self-possession. The details of the sentence soon reached the mob outside, and there seemed to be a general disappointment that it was not a fine. All the crowd now wanted was to catch a glimpse of the prisoner. They tried at intervals to force the main entrance, but the mounted police kept them at bay as the egress of officials was being impeded. A cry of "Here he comes!" was raised from one quarter, and there in another, a regular excitement being kept up continuously, so that the crowd rushed from one place to another upsetting every-body who impeded their way, but the policemen stood their ground well under the circumstances. If the police were harsh with them occasionally, they simply merited it, as no respect whatever was paid to the repeated orders to "keep back."

As Mr. Justice Norris entered his brougham and drove away, Superintendent Johnson rode by the conveyance to see it safe out of the crowd. In spite of this, a brickbat was thrown across the road. The *durwans* of the Town Hall, in whose breasts till rankled the affray which lately took place, were mixing freely, and, unasked, seemed to help the police very materially. The prisoner was not sent away in the prison van, although "Black Maria", as the van is called was somewhere near, but out of sight. He drove away with Mr. Browne, one of the bailiffs, from the strand side, and was safely in Jail before any body seemed to be aware of his having gone. The crowd did not disperse until after four o'clock, when the Deputy Commissioner ordered the police force to leave, just after he had seen the Chief Justice and other officials drive away.—*Statesman.*

OPINIONS OF THE PRESS.

The action of the High Court in the case of the Editor of the *Bengalee* requires to be considered from various points of view. The whole occurrence is deeply to be regretted, because it has happened at a time when a very serious breach of good feeling has arisen between the European and Native communities, and a prosecution of this unusual kind, ending in a sentence of some severity, against a popular Bengalee Editor, is likely to exasperate feelings already too bitter. True, it ought not to do so, for this case did not spring out of the present political controversy, and ought to be regarded as a thing apart from it. If the *Englishman* had been unfortunate enough to attack a Judge of the High Court as the *Bengalee* has done, it would, no doubt, have been proceeded against as the *Bengalee* has been : yet this is exactly what it will be difficult to get the native community to believe. And unfortunately the Chief Justice has allowed an allusion to slip into his judgment which furnishes what we are afraid will be regarded as a link of connection between the case and the political controversy. What evil genius led Sir Richard Garth to drag into his judgment an uncalled for reference to the fact that that the accused was once a member of the Covenanted Civil Service ? The past history of Surendra Nath Banerji was in no way before the Court, and the allusion was unkind, uncalled for, in very bad taste, and capable of being regarded as an indication that the controversy about these native civil servants was in the minds of the judges.

Coming to the case itself, we have first to regard it with reference to the fact that the defendants appear to have admitted their guilt. Granting, then, that they were guilty of contempt of Court, the only question is as to the adequacy of the punishment inflicted. It was the opinion of Mr. Justice Mitter that the apology offered ought to have been accepted, and no punishment inflicted. In this opinion we are inclined to concur. We attach much more weight than the Judges did to the fact that the *Bengalee* wrote on the strength of statements which had already been publicly made, and had been for some days before the public uncontradicted. The *Brahmo Public Opinion* is one of the most respectable native weeklies, and it might be presumed to be particularly well informed as to what takes place in the High Court, seeing that its editor is understood to be an attorney of that Court. Whatever may be thought as to the phraseology employed by the *Bengalee*, we cannot admit that the Court had any sufficient reason to hold that it had not acted in good faith in accepting as true the uncontradicted statements of the *Brahmo Public Opinion*. There is not a newspaper in India which does not almost daily accept statements on the authority of some contemporary, and if we were precluded from doing so until we had first ascertained from original sources the correctness of such statements, the work of journalism would be very seriously hampered.

That the accused was guilty of contempt of Court we cannot deny —first, because guilt was admitted, and, second, because we have not

yet found out under what law the accused were proceeded against. But we venture to call in question the Chief Justice's dictum that the offence committed was an infraction of the law of libel. If it was, why was the accused not proceeded against under the law of libel? We are persuaded that if he had, any jury would have held that the comments were made in good faith. If the offence lay in the phraseology, only, as we think it did, the apology made for that was, we think, sufficient, and ought to have been accepted. But it appears to us, looking at the terms of the judgment, that the Court, while professing to try the accused for contempt, have not punished him for contempt, but for a breach of the law of libel, and that the sentence is, therefore, not merely too severe, but invalid. May we ask the Chief Justice and the Judges who concurred with him, if the question of good or bad faith is an element in the offence of contempt of Court? Contempt is not the less contempt because it is expressed in good faith. It is only the more genuine. In respect to a breach of the law of libel, on the other hand, the question of good faith is essential. Therefore, as the Judges condemned the Editor of the *Bengalee* because they refused to believe that he wrote in good faith, and in disregard of his apology for contempt, we repeat that the Court tried him for one offence, namely, contempt, but sentenced him for another, namely, libel, which it certainly had no power to deal with as it has done in this case.

Another consideration affects the question as to the amount of punishment. The Code of Criminal Procedure, by which, since the 1st of January last, the procedure of the High Court is regulated, limits the amount of punishment which the Court can inflict for contempt committed in its presence to a fine of Rs. 200, or in default, one month's simple imprisonment. It follows that, if Surendra Nath Banerji had presented himself in Mr. Norris's Court, and called him to his face a Scroggs or a Jeffreys, accused him of trampling on the religious feelings of the people, and told him he was unworthy of his position on the Bench, the Court could not have inflicted on him a higher penalty than a fine of Rs. 200, except after a regular trial under section 228 of the Penal Code. Under what law, then, can the Court inflict a penalty of two month's imprisonment, without the option of a fine, when the offence happens to be committed outside the Court?

We have written thus far on the assumption that the accused was guilty of contempt of Court. But what is contempt of Court? So far as we can gather from the written law on the subject, it is contumacy,—disobedience or neglect of the authority of the Court. This is the only kind of contempt, so far as we can discover, with which the law empowers any Indian Court to deal. There is a seperate provision for cases of defamation; yet, as we have already contended, it appears really to have been for defamation that the High Court has punished the Editor of the *Bengalee*. It will be observed, and

remarked on as a curious fact, that one may search the judgment of the High Court in vain for any definition of the crime of which the accused was guilty. Guilty it held him to be; but guilty of what? Apparently not of contempt of Court, as understood in Indian law, but of some other kind of contempt of Court of which Indian law makes no mention whatever. Why did not the Judges tell us what the nature of this contempt is, and refer to some authoritative definition of it? Why did they not cite the law under which they proceed? They tell us that they find ample precedent in England for their procedure, but that is a very vague statement, and we think it is much to be regretted that the Counsel for the accused refused to argue the point raised in the affidavit as to the Court's jurisdiction. We are strongly inclined to suspect that the action of the Court was *ultra vires*, and that the English precedents do not now govern the procedure of Indian Courts in cases of this nature. We know that the contentions that the power to imprison for contempt is a power which the High Courts of India have inherited from the old Supreme Court, which was invested by Royal charter with all the process of authority of the then Court of King's Bench; but we also know that our ablest lawyers have held that the High Court did not inherit this jurisdiction, and we hold that the question ought to have been argued. It will be observed that Mr. Justice Mitter cited two Indian precedents, one of which was the well-known case of Mr. Tayler. But Mr. Mitter seems to have forgotten that out of Tayler's case sprang another which has a closer analogy to the present case. Mr. Tayler, whose offence had been committed, we believe, in a letter to the *Englishman*, was sentenced to a fine of Rs. 500, and imprisonment till the fine was paid. When this sentence was published, the *Englishman* strongly censured it, describing it, we believe (we have not the file before us) as "cruel." Sir Barnes Peacock thereupon issued a rule against the Editor of the *Englishman*, who appeared to answer to a charge of contempt. Messrs. Paul and Kennedy were the Counsel for the accused, and they argued that the Court had no jurisdiction, and could not proceed against a person for contempt not committed in presence of the Court. Possibly, if the same journal had stood last week in the place of the *Bengalee*, Counsel might have been found to conduct a similar line of defence. However that may be, we believe the arguments of Mr. Paul and Mr. Kennedy have never been answered, and that, though the question is opened to doubt, the jurisdiction then (and never again till now) claimed by the Court, is not a jurisdiction that ought to be assumed without argument. We may say that, in the case we have mentioned, the then Chief Justice shelved the difficulty by accepting an explanation to the effect that the accused did not use the word complained of in the offensive sense put upon it by the Court, and discharging the accused. We trust something may yet be done to put this question of jurisdiction beyond dispute. Means will probably be found of bringing the case before the Privy Council. It is not to be tolerated, now that India has its own scientifically

codified laws, that, in the exercise of a disputed jurisdiction, and following uncited English precedents, the High Court should be able to constitute itself both prosecutor and judge in respect of an offence which is nowhere defined, and to inflict a penalty to which there is no prescribed limit. If such a state of things does not produce "a Jeffreys or a Scroggs," which, happily, is in these days impossible, it is certainly well fitted to develope all that is least admirable in a judge.—*Statesman, May* 7th, 1883.

We regret that both our local contemporaries accord their approval to the proceedings of the High Court in the case of the Editor of the *Bengalee.* We feared this, for to seem to defend a native Editor might at the present time involve certain unpleasantnesses which one would rather avoid. But it is a vitally important question for the Press, whether the High Court really has the jurisdiction and the powers which it has assumed in this case. If it has, the liberty of the Press, in the way of criticising the conduct of High Court Judges, is just so much as the Judges, for the time being, please to allow it, and no more. A Judge of the High Court thinks (rightly or wrongly) that something in a newspaper regarding himself is contempt. A rule is issued against the paper without warning. At two days', or, if the Judge pleases, at a single day's notice, the accused has to appear. He is charged with contempt of Court, but there is no legal definition given of his offence ; no law is specified as sanctioning the proceedings of the Court; no precedents are cited. There is nothing but the opinion of the Judges to decide whether what he has written is contempt or not. The Judges are at once plaintiffs, prosecutors, and Judges. Their own discretion is the sole guide as to the amount of the penalty.

Now, granting that the article in the *Bengalee* is indefensible, and that the Editor deserved to be prosecuted and punished, is it not plain, nevertheless, that the power exercised by the Court in this case is one which may be used to the destruction of the liberty of the Press, so far as criticism of our judges is concerned ? If law and precedent really give this power to the Court, it is surely a most dangerous power. If the Court does not possess this power, is it wise in the Press to allow it to usurp it without protest ? We have already pointed out that the jurisdiction of the Court is at least open to serious question ; that it has been denied by our ablest lawyers ; that in the last preceding case of the kind (the only one that we remember), in which the *Englishman* was charged with contempt, the foremost Counsel in Calcutta argued that the Court had no jurisdiction, and we believe their arguments were unanswered. When the Editor of the *Englishman* was charged with contempt, the jurisdiction of the Court was called in question ; why should it be allowed without question when the accused happens to be a Bengalee Editor ? No matter how scurrilous or libellous the article may have been, the serious question is—not what was the character of the article, but what is the jurisdiction of the Court ? We do not ask that newspaper articles, libelling or abusing the Judges,

should go unpunished ; we do ask that offenders should be prosecuted and punished according to written law. Is that an unreasonable demand ? We deny that any written law exists to justify the procedure against the *Bengalee.* If we are wrong, we are willing to be convinced. Will any one refer us to the law under which the High Court of Calcutta judged and sentenced Surendra Nath Banerji ? If no such law exists—if the Editor of the *Bengalee* has been punished without law, who knows whose turn may be next ?—*Statesman, May* 8th, 1883.

We have asked to be referred to the law under which the High Court tried and punished the Editor of the *Bengalee.* The only answer as yet is the *ipse dixit* of a local contemporary :—"As to the contention "that the action of the Court is an invasion of the liberty of the Press, "because the case was concluded when the article appeared, it betrays "an astonishing ignorance of the law." We have said nothing about the case being concluded when the article appeared, but we do say that the action of the Court is an invasion of the liberty of the Press. Moreover, we admit entire (but not astonishing) ignorance of the law. We have not that gift of our contemporary which enables him to know things that do not exist, and gives (though we deny that it is "the vision and the faculty divine") to airy nothing a name and local habitation. However, having charged us with "astonishing ignorance of the law," he ought in pity, if not in justice, to enlighten our ignorance. And this is how he does it :—"Though the Press possesses the most 'ample liberty to criticise in good faith the merits of a judgment, or of 'any order of a court of justice, after the conclusion of a case, an im-'putation of unworthy motive, or unfitness, made against a Judge, in 'respect of his conduct as such, is contempt whenever it is "made." If our contemporary had said that it was a breach of the law of libel, as the Chief Justice said the *Bengalee's* article was, we might be prepared to admit that, and from his use of the phrase, "in good faith," we are disposed to think that is what he means. But if the offence is a breach of the law of libel, or if it is an offence under section 228, there is, as we have pointed out, a prescribed procedure which the Court has no authority to set aside. If our contemporary means that the offence is "contempt" of a kind with which the Court can deal summarily, and which it can punish at its own discretion, then we say we are ignorant of the law which makes it such an offence, and which gives the Court this arbitrary jurisdiction. Our contemporary's *ipse dixit* is not law, but it is the only law he has given us. He says the offence is contempt : and there is an end of it. Now, that is just what the Judges did, and what we complain of. They said the offence was contempt, and that they had jurisdiction to deal with it as they did ; but beyond the *ipse dixit* of the Chief Justice, we can find no law on the subject.

Let us state again—for the matter is of the gravest importance—our difficulty as to this case. Our Indian law recognises an offence

which it calls contempt of Court, and it prescribes a certain procedure with regard to it, and fixes a penalty for it, which is not to be exceeded. But in the present case, the Judges did not adopt this prescribed procedure, nor abide by the legal penalty, nor did they make any reference to the sections of the Penal and Procedure Codes which deal with the offence called contempt of Court. Evidently, therefore, they meant by "contempt," in this case, something different from the offence which goes by that name in our written law. They have therefore dealt with an offence not defined, nor even mentioned, in our written law, and they have dealt with it according to a procedure not laid down in our written law. Or, if such an offence is defined, and such a procedure laid down in our written law, we are ignorant of any such law, and we have requested, and again request, that it should be pointed out to us.

But there is such a thing as unwritten law, and we understand that the High Court claims the jurisdiction which it exercised in this case, as a jurisdiction which it has inherited, and which it still retains, though our written law does not recognise it. In that case, we shall be content in the meantime if an authoritative ruling in favour of this claim of the High Court can be pointed out to us. We believe no such ruling exists, but we are willing to be enlightened. The question was not argued in the present case, so we must go further back for a precedent and a ruling. We have already stated that in the last preceding case of the kind, in which the Editor of the *Englishman* newspaper was the accused, the jurisdiction of the Court was disputed, and no ruling was given on the question. That on one or two previous occasions, the Court claimed and exercised this disputed jurisdiction is no more proof that it really possessed it than is the case of the *Bengalee*. Moreover, even if it were conceded that the High Court formerly possessed this jurisdiction, it would remain to be shown that it retains it under the new Procedure Code by which its action is now regulated.

But we have already shown that by sections 2 and 5 of the Indian Penal Code, the Courts are precluded from proceeding against any offence under that Code otherwise than in the prescribed manner. And it appears from the judgment delivered by the Chief Justice that the offence of the Editor of the *Bengalee* was a breach of the law of libel. Therefore, by section 2, the accused, if guilty, was liable to punishment under the Penal Code, "and not otherwise." Our belief is that there is no answer to this argument. If there is an answer, will any one state it?—*Statesman, May 9th*, 1883.

We have not hitherto thought it necessary to say that we do not defend nor approve of the style in which the *Bengalee* attacked Mr. Justice Norris. The more important question throws the smaller one into the shade. We have said that, notwithstanding the judgment of the Court, we believe that the accusation brought against Mr. Norris was brought in good faith, and we should have liked to see the case

tried under the law of libel, as, if tried at all, we believe it should have been. But even if the accusation was made in good faith, the phraseology was certainly offensive, and called for unreserved apology. An unreserved apology should have been accepted as sufficient. It is a little difficult at first to guess what it could have been that suggested the allusion to Jeffreys and Scroggs. It is, in fact, impossible to understand the allusion, if we run away with the idea that the Editor intended to liken Mr. Norris to Jeffreys and Scroggs. We believe he had no such intention. It is to be observed that he does not say that Mr. Norris recalls Jeffreys and Scroggs, but that he recalls to mind "the days of Jeffreys and Scroggs." Nor is this a distinction without a difference. What was the outstanding feature of prosecutions in the days of Jeffreys and Scroggs? Disregard and contempt of the religious beliefs and feelings of accused persons. Now, the article in the *Bengalee* was written in the belief—the mistaken belief—that Mr. Norris had grossly insulted the religious beliefs and feelings of the people of India, and he thought—not so very unnaturally, after all—of the days of Jeffreys and Scroggs. We do not defend the allusion. It was neither just, nor in good taste. But we have tried to explain how the recollection of the days of those notorious judges was called up in the mind of a man acquainted with English history, and passionately fond of studying those periods of it distinguished by the struggle for civil and religious liberty.—*Statesman, May 9th*, 1883.

*Mr. Linton's** contention that section 2 of the Penal Code does not take away "the power of the High Court of issuing attachments for contempt out of Court, as this power is inherent in every Court of Record," seems to be inconsistent with the explicit provisions of both the Penal and Criminal Procedure Codes, and with the ordinance of the Letters Patent. It will be observed that he has to go far hence to British Guiana, and back to 1866, for his precedent, and, after all, it has no possible application. It is enough to say here that in McDermott's case in British Guiana there was no statute law governing the subject, and it is therefore impossible to treat British Guiana and British India as upon the same footing. Nor have English precedents of ancient date any bearing on the subject. According to an old English law, it is a high contempt "to assert that the Court has no summary jurisdiction to punish for contempt by attachment." Perhaps our correspondent did not quote this against us, lest the Judge's should think it their duty to issue a rule against the *Statesman* for questioning the High Court's jurisdiction. Yet we believe we are not only innocent in law, as well as in intention, of contempt of Court, but that we are vindicating the law. It is to be regretted that this vindication was necessary, but duty must be done. And if we are right, as we truly believe we are, we are sure that the High Court would gain nothing but honour by avowing, and, so far as may now be possible,

* See Mr. Linton's letter, *Statesman*, May 9th, 1883.

rectifying, its mistake. We believe that Mr. Justice Norris, who, whatever mistakes he may make, is believed to be a man of fearless honesty, openly avowed the other day on the Bench an error into which he had fallen, and did all in his power to make reparation. The Judges with whom he sat in this case are, we may presume, no less conscientious; and we have therefore reason to expect that when they have satisfied themselves that their proceedings in this case were *ultra vires*, they will show no less magnanimity than was exhibited by Mr. Norris.

But at the risk of repeating much that we have already said, we must state as clearly as possible why we think that the High Court does not possess summary jurisdiction in cases of contempt out of Court. We shall put our arguments in the baldest logical form, in order that their fallacies, if they contain such, may be at once detected and exposed.

(1)—The "Bengalee's" offence was a breach of the law of libel.

In support of this assertion we shall quote from the judgment delivered by Sir Richard Garth, Chief Justice:—

"The Judges are at a loss to understand how a libel so gross could possibly have been inserted in your paper in good faith, and they find great difficulty in believing that a gentleman of your education and a newspaper editor could be so utterly ignorant of the law of libel as to suppose that you were at liberty to publish those attacks upon the conduct and character of a High Court Judge merely because you found them, though in a less virulent form, in another native newspaper."

We may add that the provisions of the Penal Code fully bear out the Chief Justice's opinion, that "attacks upon the conduct and character of a High Court Judge," if not made "in good faith," constitute a breach of the law of libel. The second exception under section 499 runs as follows:—

"It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther."

The plain inference of course is that such opinions, if not expressed in good faith are defamation.

(2)—The Indian Law of Libel is contained in section 499 of the Indian Penal Code.

(3)—Section 2 of the Indian Penal Code, section 5 of the Criminal Procedure Code, and section 30 of the Letters Patent, show that offences under the Penal Code must be dealt with according to a certain prescribed procedure, and *not otherwise*.

Though this is not now likely to be disputed, it may still be well to quote from the sections referred to. Section 2 of the Penal Code says:—

"Every person shall be liable to punishment *under this Code, and not otherwise*, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories on or after the said first day of May 1861.

The Letters Patent, section 30, says :—

"And We do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act XLV of 1860, called the 'Indian Penal Code,' or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and *not otherwise.*

As if to leave no possibility of doubt in the matter, when the procedure of the High Courts was brought under the provisions of the Criminal Procedure Code, a new section (section 5 of Act X of 1882) was inserted, which runs as follows :—

"*Trial of offences under Penal Code.*—All offences under the Indian Penal Code shall be enquired into and tried according to the provisions hereinafter contained."

Now the provision "hereinafter contained," giving the Courts summary jurisdiction in cases of contempt, is found in section 480, which clearly has no application to the present case.

To these leading arguments, we may add two, which are useful for meeting possible objections. If it be said that section 2 of the Penal Code, quoted above, does not take away from the High Court the powers of summary jurisdiction inherited from the Supreme Court, or, in other words, derived from the Royal Charter, we have only to quote section 5, which specifies the laws which the Code was not intended to repeal. It runs thus :—

"Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the statute 3 and 4 William IV, chapter 85, or of any Act of Parliament passed after that statute, in any wise affecting the East India Company, or the said territories, or the inhabitants thereof."

But nothing is saved prior to the statute of William IV, whereas the Royal Charter, from which the High Courts claim the summary jurisdiction, dates from the reign of George III.

The only other objection we can conceive to our argument is that, while the offence of the *Bengalee* was a breach of the law of libel, it was also a contempt of Court, and that it was contempt of Court, and not as breach of the law of libel, that it was dealt with by the High Court. But a breach of the law of libel must, as we have shown, be

dealt with under the Code, and ***not otherwise***. And the Code does not recognise an offence like that committed by the *Bengalee* as contempt.

To sum up. An offence against a provision of the Indian Penal Code must be punished under that Code, and according to the procedure laid down in Act X of 1882, and ***not otherwise***.

The article in the ***Bengalee***, if it was not written in good faith was a breach of the law of libel—that is, an offence under the Indian Penal Code.

It was, therefore, ***ultra vires*** of the High Court to punish the Editor of the ***Bengalee***, otherwise than according to the law as contained in the Penal Code and the Code of Criminal Procedure.

If this conclusion is sound, it surely requires no logic to help us to a conclusion as to what it is now the duty of the High Court to do. How it should go about it, it is not for us to say. Our correspondent, Vakeel* has suggested one course that might be adopted on behalf of the prisoner, but we think it would be more dignified were the Court itself to take the initiative.—***Statesman, May 10th***, 1883.

It may be well to discuss Mr. Linton's argument a little more fully than it was convenient to do in our leading article. His contention is that the High Court possesses "the power of issuing attachments for contempt out of Court, as this power is inherent in every Court of Record," and he denies that this power has been taken away by legislative enactment. We may state it thus:—If the High Court is a Court of Record, and if the jurisdiction now claimed for it has not been taken away by legislative enactment, then it possesses that jurisdiction. Now, the old Supreme Court was created a Court of Record by section 13 of 13, George III, c. 63, and it is true that every Court of Record has the power to fine and imprison for contempt of its authority, so long as its powers are not abridged by legislative enactment. But, speaking with all deference to legal authorities on a question of this kind, we contend (1) that the High Court is not a Court of Record, and (2) that its powers to punish for contempt are controlled by explicit legislation.

The Supreme Court was declared by statute to be a Court of Record. But the charter creating the High Court and abolishing the Supreme Court did not make the High Court a Court of Record. By section 9, the High Court was endowed with all such powers and authority as her Majesty might grant and direct in the Letters Patent. But we have shown by quotation from the Letters Patent that these do not include the power of punishing an offence against the Penal

* A Vakeel in his letter published in the *Statesman*, May 9th, 1883, suggests to make an application for review of judgment upon a certificate from, the Advocate-General.

Code, otherwise than under the provisions of the Code. And section 9 goes on to say :—

"And, *save as by such Letters Patent may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council,* the High Court * * shall have and exercise all jurisdiction and every power and authority whatsoever, in any manner vested in the old Supreme Court."

And section 11 of the same Act makes the High Court "subject to the legislative powers * * of the Governor-General in Council." Nothing could be more conclusive than this. The powers inherited from the old Supreme Court by the High Court are governed by the Letters Patent and the Acts of the Governor-General in Council. It has not, therefore, inherited the unabridged powers of a Court of Record. No one will assert that if an Act of Parliament were passed, regulating punishment for contempt in England, the Court of Queen's Bench could still punish summarily as a Court of Record. And we contend that the High Court in India cannot.

In the McDermott's case quoted by Mr. Linton, no question was raised as to the powers of the Court being in any way abridged by legislative enactment, but only the question whether it was a Court of Record. Therefore, as we have said, the case has no possible application. We have shown that, though the old Supreme Court was created a Court of Record, and possessed the jurisdiction now claimed by the High Court, the High Court was not by its Charter Act created a Court of Record ; whereas it was, on the other hand, explicitly laid down in the Charter Act, that the powers it inherited from the Supreme Court were subject to the Letters Patent and the Acts of the Indian Legislature. And we have also shown, in the foregoing article, that both the Letters Patent and Acts of the Indian Legislature have very carefully circumscribed the powers of the High Court, excluding the jurisdiction now claimed for it.

Now, to show how useless it is to go back, as Mr. Linton does, to old English authorities in cases of contempt, we quote the following observations, made by Lord Chief Justice Cockburn in 1868 in the case of *Waxon vs. Walters* :—

"The law of libel has only gradually developed into a satisfactory state ; for the liberty of a public writer to comment upon the conduct and motives of public men has only recently been recognised. Comments on Government, on Ministers, and officers of State, on members of both Houses of Parliament, on Judges and other public functionaries, are now made every day which, half-a-century ago, would have been the object of 'ex-officio' informations, and would have brought down fine and imprisonment on publishers and authors. Yet who can doubt the public are gainers by this change, and though public men may often have to smart under the keen sense of wrong inflicted by hostile criticism,

the nation profits by public opinion being thus freely brought to bear on the discharge of public duties."—*Statesman, May 10th*, 1880.

The *Times of India*, which, like the rest of our Anglo-Indian contemporaries, approves of the proceedings taken against the Editor of the *Bengalee*, unconsciously adds great weight to the presumption that, in relying on the statements made by *Brahmo Public Opinion*, he acted in good faith. Our Bombay contemporary, as we have said, approves of the prosecution and the sentence, and, among other things says :—"It is manifestly not a case in which the liberty of the press "is involved, but rather in which the license of the press is concerned, "and when brought to the proof, Mr. Banerji frankly acknowledged that "he found his comments to be based on inaccurate and misleading state- "ments ; as the Chief Justice pointed out, his duty was to find this "out before giving publicity to his strictures on Mr. Justice Norris. The "punishment awarded is extremely light, and no fine has been added "thereto." It was the duty of the *Bengalee* not to accept as reliable the statements of a contemporary, but to find out their accuracy before making strictures upon them. Perhaps the *Times of India* is right in its theory, but not in its practice. The article from which we quoted concludes as follows :—

"Impropriety of speech on the judicial bench is quite as inexcusable as impropriety of language in a newspaper. Contempt of public opinion no more becomes a judge than contempt of Court becomes a journalist. Whether we are justified in saying that Mr. Norris has himself only to blame for most of the recent too severe attacks which have been made upon him by the Bengal papers, we will leave our readers to say after mentioning a few incidents of his lordship's short judicial career. In the first place, before he had been three months a judge, Mr. Norris distinguished himself in open Court by characterising the ex-King of Oudh as a 'caged creature,' and by making some other unpleasant observations regarding the royal pensioner. Subsequently, Mr. Norris attracted attention by his somewhat novel treatment of an unfortunate suitor who entered his presence chewing betel-nut. Then, again, there was the very recent case of the native who asked to be excused from attendance at the Sessions. Being unable to explain in English why he wished to be excused, Mr. Norris (we are quoting from one of the Calcutta papers) directed the poor man to wait in Court for the day 'during which the learned Judge had no doubt the juror would obtain a sufficient knowledge of the English language to plead his own cause.' The above facts have never, so far as we are aware, been contradicted, and we must, therefore, assume that they are substantially correct. Perhaps if Mr. Norris had shown a little more consideration for the feelings of others, the Editor of the *Bengalee* would not have been so ready to believe the improbable story about the dragging of the sacred *saligram* into Court."

Here Mr. Norris is charged with "impropriety of speech" on the bench, with contempt of public opinion, and is said to have only himself to

blame for the attacks upon him; and these strictures are justified by a reference to certain statements that have been made about Mr. Norris in the Calcutta papers. "The above facts," says our contemporary, "have never, so far as we are aware, been contradicted, and we must "therefore assume that they are substantially correct." This is precisely the position taken up by the Editor of the *Bengalee.—Statesman, May 11th*, 1883.

In discussing the contempt case we have purposely confined ourselves to the question of the Court's jurisdiction. That is the question of greatest public importance, and we submit that it is a question which ought to be regarded as of vital importance even by those who care nothing at all about the Editor of the *Bengalee*. We also submit that our Anglo-Indian contemporaries have not been true to the interests of the press in quietly accepting the assertion of the Court's jurisdiction as indisputable. Nor can we altogether get rid of the suspicion that if the prisoner had been an Englishman, the Anglo-Indian press would not so readily have yielded this point. We hope they will yet re-consider the question. But though the question of jurisdiction is the most important, it is not the only important question. In dealing with it, it has been convenient to assume that the Editor of the *Bengalee* was really guilty of a breach of the law of libel. But though we are not prepared, in the face of the opinion of so many Judges, to assert that he was not guilty of defamation, we cannot but think that the question is still an arguable one; and if it be so, the press would be unfaithful to its own interests if it abstained altogether from arguing it.

The libel consisted in republishing from another newspaper certain statements regarding Mr. Justice Norris, and in basing on these statements certain criticisms on his conduct as a judge. Now, according to the Code, "it is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther." The phrase "any opinion whatever" is wide enough, we presume, to cover all that was said in the *Bengalee*, and the only question is whether the opinions were expressed in good faith or not. Good faith, according to the Code, is the exercise of due care and attention. Now it will often be a matter of opinion whether, in any case, due care and attention have been exercised, and the question is one which is properly left to be decided by a jury. In this case the Judges decided that due care and attention had not been exercised, because the Editor accepted as true statements made by another newspaper, and did not himself make any enquiry into their accuracy. In our opinion an Editor may, and, as a matter of fact, all Editors often do, accept in perfect good faith statements publicly made in other newspapers and not contradicted. If there is anything strange or improbable in the statements, a careful Editor will not doubt take steps who ascertain whether or not they are

true before commenting on them. But an Editor may be somewhat incautious in accepting such statements, without being so wanting in due care and attention as to be guilty of bad faith. Some men are constitutionally cautious, others are naturally impulsive. One man may in good faith accept a statement as true, which a naturally more cautious man would not accept without corroboration. The question to be considered is, whether there was in this case any thing which ought to have suggested to an ordinarily careful and conscientious Editor that his authority was unreliable. We do not think that there was. We desire to say nothing disrespectful of Mr. Norris, but he has got the reputation of saying and doing hasty and eccentric things on the Bench, and we venture to say that it was not likely to occur to readers of the *Brahmo Public Opinion* that its statements about Mr. Norris were improbable. We may say, for our own part, that we read them without suspecting their accuracy, and we are not prepared to say that had we desired to comment upon them, we would have thought necessary to go in quest of proof. And we pointed out yesterday that a very respectable paper on the other side of India had accepted a number of statements about Mr. Norris on no better authority than the *Bengalee* had, and had made them the subject of severe comment. Moreover, there was in this case exceptionally good reason for accepting, without question, the statements of the *Brahmo Public Opinion*. The Editor was known to be an attorney of the High Court, presumably well acquainted with what goes on there, and to whom the consequences of publishing false statements disparaging to a Judge would probably be very serious. We hold, then, that there was no such *prima facie* improbability about the statements themselves, and no such reason for doubting the credibility of the writer, as to suggest to the Editor of *Bengalee* the necessity for making further enquiry.

In the case against the *Englishman* newspaper, to which we have more than once referred, there were several remarks made by the then Chief Justice, Sir Barnes Peacock, which induce us to believe that he would not have condemned the Editor of the *Bengalee* in this case for publishing the statements and commenting on them as facts. He repeatedly made use of the word "wilful" in describing misstatements which were to be considered as libellous contempt. "False accusations founded on *wilful* misstatements" were what Sir Barnes Peacock condemned. He said : "I do not claim for myself any immunity from unsparing criticism for any of my public acts, but all I claim is that there shall be no *wilful* misrepresentation or concealment of facts, &c." Did the Editor of the *Bengalee* misrepresent facts *wilfully*? We do not believe that he did. At any rate, we contend that the question ought to have gone before a jury.

Thus far we have considered only the question of good faith in accepting as true the statements of the *Brahmo Public Opinion*, and making them the basis of comment. There may, however, be a

further question as to whether the facts accepted in good faith, were such as to justify the particular criticisms based upon them. There is not only room for the exercise of good faith in forming an opinion upon facts, but also in giving expression to the opinions formed. A writer must give due care and attention to his words and phrases, in order that they may convey such ideas as he honestly believes it for the public good to convey, and may not produce misrepresentation and injury. It is here where the present case is most doubtful, and we are not prepared to express a strong opinion one way or the other. If the facts were honestly believed, were the comments justifiable in the public interest? We are not prepared to defend them, nor to say without hesitation that they, are indefensible. But we do think that retractation and apology should have been accepted, and that a public rebuke would have sufficiently vindicated the dignity of the Court.—***Statesman, May*** **11*th*,** 1883.

A deep dread has fallen on the native community,—a dread of a series of repressive prosecutions following in the wake of the ***Bengalee*** case. It is feared that the Bengal Government will give its officers full liberty to prosecute for libel whenever they wish, and that an attempt will be made to bring the native press under a reign of terror. The first thing that strikes one on seeing everywhere the evidences of this strong feeling is that the late High Court prosecution has failed to produce the impressions it was expected to produce, and which are the object of such prosecutions, but has evoked feelings which one can only deeply regret and which we do not wish to describe. Perhaps the next thing that strikes one as remarkable is the universality, among all classes of the native community, of the feelings referred to, and of sympathy with the native press. It is generally supposed that the native press and native Editors are not much cared for except by a small class of the people. The present excitement shows, we think, that this is a mistake. Native society has been stirred from top to bottom; and if there were to be, what so many expect, a war of prosecutions against the native press, it is not doubtful on which side the sympathies of all ranks would be.

But our object in writing on this subject is to say that this fear of prosecutions is not a reasonable fear. At bottom—it is useless to conceal the fact—it rests on a suspicion that the authorities are moved by a vindictive feeling—a suspicion which must be baseless. The only excuse for its existence is that letters and even articles in some of our English contemporaries have very plainly suggested it, and that we are living in a time of excitement such as the present generation has never witnessed. We may also say that, even if the authorities were contemplating a series of prosecutions, no honest journalist need be afraid. There will be no more summary proceedings for contempt, and no prosecution under the law of libel can possibly be disastrous to any honest writer. The Indian law of libel is most just and liberal, and a fair trial under it will not result in the punishment of any one who

does not richly deserve it. It allows ample liberty for fair and outspoken criticism, and we can only advise those who are in dread of prosecution to keep themselves safe by writing nothing save in good faith and in the public interests, resolutely avoiding every suggestion which comes from malice. Particular native Editors should beware of how they give vent to their feelings about individuals. Criticism of individuals concerned in public actions cannot, of course, be avoided; but our native contemporaries will do well to remember that it is here where, if they allow themselves to be guided by feeling, they are very apt to be unjust and possibly defamatory.—***Statesman, May 12th***, 1883.

If anything were needed to give weight to the arguments and authorities we have already advanced to show that, in the Contempt case, the proceedings were ***ultra vires*** of the Court, the following opinions of eminent English judges may be accepted as settling the matter. In Reg. ***vs.*** Lefroy, L. R. 8, Queen's Bench, page 134, Lord Chief Justice Cockburn observes:—

"The power to commit for contempt is fully gone into by Blackstone and Hawkins, but though this power is recognised in the Superior Courts, it is nowhere said that an inferior Court of Record has any power to proceed for contempt out of Court, and there is an obvious distinction between the Superior Courts and other Courts of Record. In the case of the Superior Courts at Westminster, which represent the one Supreme Court of the land, this power was coeval with their original constitution, and has always been exercised by them. These Courts were originally carved out of the one Supreme Court, and are all divisions of the ***aula regis***, where it is said that the King in person dispensed justice, and their power of committing for contempt was an emanation of the Royal authority, for any contempt of the Court would be a contempt of the sovereign. But it is a very different matter with respect to the County Courts and similar inferior Courts. No case is to be found in which such a power has ever been exercised by an inferior Court of Record, or at all events, upheld by a decision of the Superior Courts. Finding, therefore, this distinction, that the Superior Courts have exercised the power from time immemorial, and that no such power has ever been known to be exercised by an inferior Court, that would be sufficient to dispose of this case. But, in fact, it is not necessary to go so far as that. The statute itself under which the County Courts are constituted points out what was the extent of the power for punishing for contempt intended to be conferred upon them. The Legislature had anticipated the probability of contempt, and the necessity of giving power to the Courts of repressing these contempts when accruing in the Court itself, and accordingly, by Section 113, a power is given to the judge to order into custody, till the rising of the Court, any person guilty of any misconduct in Court, or to commit him to prison for any period not exceeding 7 days, or a fine of £5, with the alternative of imprisonment of the same duration in default of payment. But it is said that although the Legislature thus limited the power

to contempt in Court, that was not intended to alter the law as to the general jurisdiction of a Court of Record, as it is possessed by inferior Courts, of fine or imprisoning to any extent at their discretion. This would lead to a singular inconsistency.

"If a contempt were committed in the face of the Court, the Judge could only imprison the offender for seven days or fine him £5, while for a contempt out of Court he might fine him several hundreds, or commit for months, or even years. We therefore must understand the Legislature to have confined the power to the instances given and to the extent limited. In either view, therefore, as it seems to me, we must hold the jurisdiction assumed by the judge to be beyond his powers, and the rule for a prohibition must be made absolute."

And Justice Mellor, in a few clear words, takes the same view :—

"When, therefore, the statute makes the County Courts of Record, and protection is afforded by statute against contempt committed in Court, and the limit of the jurisdiction is defined by Section 113, the intention is clearly shown of confining the jurisdiction to contempt in the face of the Court, leaving what may be called contempt out of Court to be punished by the general law, by indictment or otherwise."

It will be observed from the remarks of Lord Chief Justice Cockburn, that the power of punishing summarily for contempt out of Court is not inherent in every Court of Record. It has been recognised as inherent in the Superior Courts of Westminster, where it still exists as a relic of barbarous ages, when the King himself is supposed to have sat in person dispensing justice, and contempt of Court was also contempt of the sovereign. It was "an emanation of the Royal authority." In this view, it might be held as doubtful if even the old Supreme Court of India ever possessed this "emanation" of the divine right of kings; but, fortunately, it is of no consequence to our argument whether it did or not. What may now be regarded as beyond all dispute is the fact, that our High Courts do not possess it, for the second argument of Lord Chief Justice Cockburn, repeated in a sentence by Justice Mellor, is as clearly applicable to them as to the inferior Courts of England. In India also, written statutes point out the exact extent of the powers of the Court to punish for contempt. Here also the Legislature has limited the power to contempt *in* Court, and if it be argued that it was not intended to take away the general jurisdiction of the Courts to fine or imprison for contempt *out of* Court, at their discretion, this would lead—in the words of Lord Chief Justice Cockburn—"to a singular inconsistency." We have already stated the inconsistency in words that might have been paraphrased from the Lord Chief Justice's, though we had not then seen his judgment. If the Editor of the *Bengalee* had gone into Court, and told Mr. Norris to his face, while the case was going on, that he reminded him of Jeffreys and Scroggs, and that he was unworthy of his place on the Bench—if he had thus insulted him to his face, and

interrupted the proceedings of the Court, the highest punishment which the Court, in the exercise of its summary powers, could have inflicted on him is a fine of Rs. 200. Yet when he does the same thing out of Court, the Court sends him to jail for two months, and might have made it six months had it so pleased. Surely, an inconsistency so singular, that, with Lord Chief Justice Cockburn, we must understand that "the Legislature has confined the power to the instances given and to the extent limited. And in the words of Justice Mellor, "the intention is clearly shown of confining the jurisdiction to contempt in the face of the Court, leaving what may be called contempt out of Court to be punished by the general law by indictment or otherwise."

We now therefore assert, without fear of contradiction, that, in summarily punishing the Editor of the *Bengalee* for contempt out of Court, the action of the High Court was *ultra vires*; that the Court assumed a jurisdiction which it probably never possessed, and certainly does not now possess; that its proceedings were invalid, and that the incarceration is illegal. In punishing the Editor of the *Bengalee* without the prescribed forms of law, and with arbitrary severity, the Court has not only assumed a power which the law clearly withholds from it, but has used it with a severity unheard of, not only in India, where the power has been on a few occasions claimed before, but in England, where the relic of barbarism still really exists. In the House of Lords the other day, Lord Coleridge stated that he never imprisoned a man for contempt but once, and that only for 24 hours. Lord Bramwell said that when a Judge took notice of contempt in a newspaper article, "it generally happened that the offender apologised, and there was an end of the matter!" In England, where the Courts have the power, that is how they exercise it. It has in fact fallen almost into abeyance. In America where the Courts have been modelled on the English Courts, contempt in presence of the Court, but not contempt out of Court, is recognised. In India this power, which in England has come down from the dark ages and is now rarely and very leniently exercised has been assumed without right, and exercised without forbearance. We appeal to the Chief Justice and his brother Judges to take now the course which, as just Judges and true men, they are bound to take—to avow their error, and set the prisoner free. It is impossible to conceive that a false sense of shame or any such unworthy feeling should lead them, knowing their error, to leave him one day longer in jail. It is not for his sake that we ask his release. He is enjoying a sort of apotheosis. It is for the sake of the country, which is a seething mass of discontent and indignation; for the sake of the law, to which the Judges owe reverence; and in vindication of the dignity and honour of the High Court itself.—*Statesman, May 14th*, 1883.

It is deeply to be regretted that in a time of so much political excitment, we should have to fight over again the battle which the *Englishman* fought so well in 1869. What the result of that fight

was believed to be, we may show by a quotation from the *Pioneer* of the 14th of May 1869, fourteen years ago this day :—

"The public," wrote the *Pioneer*, "owe a great deal to the *Englishman*. Henceforth, we shall hear no more of contempts of Court, constructed or punished after the manner here attempted. Henceforth true criticism on the public act of a public man will always be held 'fair criticism.' *Henceforth defamation, though it be of a Judge, will be tried by the law of the land—i.e., by the Provisions of the Penal Code, and referred to a jury.*"

Unfortunately the *Pioneer* has forgotten this, and now lends its weighty approval to a revival of the obsolete, illegal jurisdiction, which, fourteen years ago, it rejoiced to have seen the last of. This surprises us in the *Pioneer*. It is less surprising that the *Englishman* has forgotten its own good service, because the *Englishman* has, for the time, lost its head. But the *Pioneer* has preserved its calmness and moderation, and its error in this case can only be ascribed to the circumstance that its present Editor is comparatively new to Indian journalism, and does not know the events of fourteen years ago. We feel sure, however, that when our contemporary sees its own words again, it will review the question in a judicial temper, and if it finds that it was right in 1869 and is wrong in 1883, it will not hesitate to say so, for the sake of the liberty of the press, if for nothing else. It would be an eternal shame to the Anglo-Indian Press, if it allowed itself to be misled in this matter, because it happens to be a Native Editor who has suffered.

Some other sentences from the *Pioneer* of the same date may be instructive :—

"*An obsolete and most arbitrary procedure* had been revived by the High Court against a man (Tayler) who was not in a position to defend himself."

"The Indian Press has made a great escape. The procedure which Sir Barnes Peacock would have applied to it has never, even in the worst days of English tyranny, been enforced against written criticism upon a judicial proceeding after that was concluded."

It should be observed that the remarks of the *Bengalee* had reference to an order of the Court which had exhausted itself, and had no reference whatever to the pending case, of which the writer said nothing.

"But not even in those days," continued the *Pioneer*, "would Mr. W. Tayler or Major Fenwick have been denied a trial by jury ; and for a full century back, English Judges have been forced to accept the same position as English Ministers of State, and seek redress for what they esteem defamatory writings at the hands of twelve jurors."

How is it that the *Pioneer* and other Anglo-Indian contemporaries see the matter in such a different light now ? Are they not plucking

the feathers from their own wings to waft the darts against the Native Press ;—*Statesman, May 16th*, 1883.

Mr. Linton's* letter, which we published yesterday, affords us another opportunity of putting as clearly as possible our views on the question of the High Court's claim to exercise summary jurisdiction in cases of contempt out of Court. We were quite aware of the fact that the English County Courts are inferior Courts of Record, and that the Calcutta High Court is not. But Mr. Linton originally argued that this jurisdiction was inherent in every Court of Record, and we thought it well to show that it is not so, but that the powers of summary jurisdiction of a Court of Record may be abridged by statute. As we possess copies of the Charter Act and the Letters Patent, and have read them somewhat carefully since Mr. Linton began this correspondence, that large part of his letter in which he summarsies the powers of the High Court might have been spared us, especially as it really has no bearings on the question in dispute.

We pointed out in a foot-note to his letter the curious weakness of his remark, that the argument used by Lord Chief Justice Cockburn was not employed by Counsel in the contempt cases which came before Sir Barnes Peacock. They could not have referred to the remarks of the Lord Chief Justice, because these were not made till 1873, whereas they were speaking in 1869. And they could not have employed the same argument, because Section 480 of the Criminal Procedure Code, on which they must have based it, did not then apply to the High Court. As the question has never been argued in Calcutta since 1869, Mr. Linton has no right to say that we stand alone in our opinion ; and if that opinion has caused surprise to the legal profession in Calcutta, we can hope that not many members of the legal profession have committed the same blunder in commenting upon it as Mr. Linton has done.

The only other part of the letter we have to remark upon is the last paragraph, where Mr. Linton meets our challenge to produce an enactment such as is required by the second clause of Section 2 of the Procedure Code, by admitting that there is none. He goes on to argue that none is needed, because "the procedure for dealing with contempts out of Court is a summary procedure authorised by law and the practice of the Courts and inherent in every Superior Court of Record." He ought to have added the clause—"until it is abridged by statute." Does Mr. Linton deny that this inherent power of a Superior Court of Record cannot be abridged by statute ? It seems incredible that a lawyer should deny this; and yet unless he does so, Mr. Linton's argument is pointless. We allege that the power in this case has been abridged by sections 5 and 480 of the new Criminal Procedure Code, which became law and became applicable to the High Court on the 1st of January 1883. And he actually answers our argument by appealing to

* See Mr. Linton's letter. *Statesman, May 17th, 1883.*

the "law and practice of the Courts" prior to 1883. Surely he must see that this is, perhaps, the most extraordinary argument ever advanced by a lawyer. It is as anachronistic as the argument with which he meets the judgment of Lord Chief Justice Cockburn. When we go back, as we have done, to the Letters Patent and the Penal Code, we can understand his appealing to case law and the practice of the Courts. But to meet arguments based on Sections 5 and 480 of the Criminal Procedure Code by such an appeal, is to appeal to that which has no existence.

As we have twice already stated the argument from Section 480—it is an exact reproduction of Lord Chief Justice Cockburn's argument—we shall not again repeat it. But the argument from section 5 may, perhaps, be put more clearly than has yet been done. The section is as follows:—

"*All offences under the Indian Penal Code* shall be enquired into and tried according to the provisions hereinafter contained; and *all offences under any other law* shall be enquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of enquiring into or trying such offences."

So, if the offence is one under the Penal Code, it must be tried according to the provisions of the Code of Criminal Procedure; and if it is an offence under any other law, it must still be tried by the same provisions, unless there is any "enactment for the time being in force" under which a different procedure may be taken.

Now, we hold that the offence committed by the Editor of the *Bengalee* was an offence under the Penal Code. For it was admittedly defamation of a Judge. And Section 499 of the Indian Penal Code makes provision for the offence of defaming a public servant, and the term "public servant" is explained to embrace "every Judge." It ought, therefore, to have been dealt with according to the provisions of the Code of Criminal Procedure. It will be replied that, though the offence was defamation, it was also contempt of Court, and that it was dealt with as contempt and not as defamation. The answer to that is in the second clause of the section. If it is an offence "under any other law" it must still be dealt with under the provisions of the Code. The phrase, "any other law," includes common as well as statute law, so that there is no escape from the section, except by admitting that contempt out of Court is not an offence under *any* law, and when Mr. Linton comes to admit that, he will be getting pretty near the truth.

We can barely imagine that by a desperate wriggle a disputant of the type so happily described by Goldsmith, might attempt to get out of the meshes of Section 5, by pleading that contempt out of Court is not an "offence" within the meaning of this Code. But the framers of the Code have been very careful to shut up this avenue of escape,

and have given us a new definition of "offence," as if to meet this very objection. The Code defines "offence" as "any act or omission made punishable by any law for the time being in force." So that contempt out of Court is either not punishable by any law now in force, or it must be dealt with according to the provisions of the Code. No demonstration could be more complete, and there is no case law to interfere with the interpretation of Act X of 1882.

Although the argument from Sections 5 and 480 of the Criminal Procedure Code is alone sufficient and decisive, and has the advantage of disposing of all case law which may be appealed to, it must not be supposed that we concede that the High Court possessed summary jurisdiction in cases of contempt out of Court up to the time when it came under the operation of Act X of 1882. The argument from Section 30 of the Letters Patent and Section 2 of the Penal Code appears to us a very strong argument, and we shall state it again briefly. The inherent right claimed for the High Court is, as Lord Chief Justice Cockburn expressed it, "an emanation of the Royal authority." But it can be shown that Royal authority itself has taken it away. Here is Section 30 of the Royal Letters Patent :—

"And we do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act XLV of 1860, called the 'Indian Penal Code,' or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, *and not otherwise.*"

It is here distinctly laid down by the Royal authority itself that any offence for which provision is made by the Indian Penal Code shall be liable for punishment under that Code, and not otherwise. The Indian Penal Code, section 2, is to the same effect, and as we have shown above, defamation by a Judge of the High Court is an offence under Section 499 of the Penal Code. Therefore by the Letters Patent, that is, by the very Royal authority appealed to, the offence of defaming a Judge in India cannot be dealt with otherwise than under the Penal Code. And therefore, in claiming jurisdiction to deal with this offence otherwise than under the Penal Code, and in setting up this jurisdiction as an emanation of Royal authority, the High Court would be taking the extravagantly absurd position of saying—"In spite of Royal authority, we have Royal authority to do this thing."

The question was not argued in Tayler's case in 1869. It was ably argued in the *Englishman* case, but was not decided. Sir Barnes

Peacock, however, gave an opinion which is no doubt entitled to great weight. He said—

"If the contempt is one which does not come under the provisions of the Penal Code, there is nothing to prevent the Court dealing with it as a contempt, and if it is a contempt punishable under the Penal Code, the Court can try it itself, but upon the understanding that the punishment to be inflicted will in no case exceed that provided in the Penal Code."

Now, if we admit that the position here taken up is sound, it strongly emphasises our main argument from the Criminal Procedure Code. The Criminal Procedure Code did not then apply to the High Court, and the Penal Code is merely a punishing Code. Sir Barnes Peacock admitted the force of the law, that if the offence was under the Penal Code, it must be tried under that Code, but the effect of that Code, he held, was only to limit the penalty. It did not prescribe the procedure, and therefore the Court could try the case by a procedure of its own. But his admission that the Penal Code must be taken as controlling the penalty, makes it clear that he would also have admitted that the Criminal Procedure Code must control the procedure, if the present law had been then in force.—***Statesman, May 18th***, 1883.

The ***Pioneer*** has an article on contempt of Court. Our contemporary declines to treat of the legal questions involved, and speaks of "the forbidden domain of legal controversy." And so the press is to allow its liberties to be quietly filched away, because, forsooth, it must not enter the domain of legal controversy. The English press would never have become the power it is, if it had held itself disqualified from discussing legal questions. At the same time we, for our part, would gladly have left the legal questions involved in the present case to be discussed in Court by the gentlemen learned in the law. It was only when we saw the case tried without any discussion of the points of law, that we felt it our duty to do our best to discuss them, and this duty we have performed conscientiously, though no doubt in a clumsy, unprofessional way.

There can, however, be no objection to the ***Pioneer*** declining to discuss legal points, if it feels itself incapable of dealing with them. What is objectionable is that, without discussion, our contemporary should assume so important and dangerous a doctrine (repudiated by the ***Pioneer*** fourteen years ago) as that the Indian press may be punished for defamation otherwise than by the law of the land. This assumption it supports by a reference to English precedent, but it quite overlooks the fact that even the English precedents it quotes refers to contempt which amounted to an interference with the progress of pending cases. There is no pretence that the offence of the ***Bengalee*** was a contempt of this kind, and if it had, we believe (speaking, of course, under correction) that it is provided for by section 288 of Penal Code.—***Statesman, May 18th***, 1883.

We have been so much taken up with the question of jurisdiction, which overshadows all others in importance, that we have not subjected the judgments in the late contempt case to the criticism which they, perhaps, deserved. There is one point, however, in the judgment delivered by the Chief Justice which ought to be remarked upon. Among other things, the judgment censured the *Bengalee* for having denounced Mr. Justice Norris as "entirely unworthy of his high office." We do not know whether or not it is the opinion of the Judges that this taken by itself constitutes contempt or defamation. We should hope not, but as it is included in the list of the *Bengalee's* offences, we think it necessary to assert that it is clearly within the province of a free press to call in question the fitness of public servants, judges as well as others, for the offices they hold. Of course if false facts are put forward to support the contention that a judge is unworthy of his office, that is defamation, and probably the Judges meant no more than this. But there is danger of misunderstanding, and it should be clearly understood that a journalist, if he does it in good faith, is perfectly entitled to express the opinion that a judge is unworthy of his office. We may here quote the vigorous language of an able correspondent:—

"The principle we must fearlessly assert is that in a country ruled with despotic power like India the liberty of the press is, to use the words of Junius—'the palladium of all the civil, political, and religious rights' of the individual inhabitant of the land. All who advocate the unfettered liberty of the press necessarily advocate the doctrine that every man has a right to express his opinion publicly or privately, verbally or in writing, regarding the official and public acts not only of the Government of the country taken collectively, but of each individual public servant serving in or under that Government; that, moreover, every one possesses the right, not only to praise or censure the public and official acts of every public servant, but to question by a criticism of his public acts the capacity and fitness of any one employed by Government as a public servant, either in the Executive or Judicial administration. The laws of India should, if they do not already, provide as effectually as any human laws can do, for the protection of the subject in his reputation as well as in his person and property; and if the characters of private men are maliciously insulted or injured, remedy by a well defined and equitable mode of trial should be open to all. If private men whose characters are justly or unjustly insulted or injured, says Junius, 'through 'indolence, false shame, or indifference will not appeal to the laws of 'their country, they fail in their duty to society and are unjust to 'themselves. If from unwarrantable distrust of the integrity of juries 'they would wish to obtain justice, by any mode of proceeding more 'summary than a trial by their peers, I do not scruple to affirm' continues Junius, 'that they are in effect greater enemies to themselves 'than to the libeller they prosecute. The most stringent penalties should be provided for the indulgence of private malice proved in re-

gular course of law, *per legale judicium parium*, a phrase which has been much used during the recent controversies; but in regard to comments upon the public acts, measures and characters of men engaged in the public service, the case is wholly and altogether different. 'As'—to revert once more to Junius,—'the indulgence of private 'malice and personal slander should be checked and resisted by every legal 'means, so a constant examination into the characters and conduct of ministers and magistrates'—Indice' public servants and judicial officers, 'shouid be equally encouraged and promoted.' But no man should be assailed or punished for such strictures passed *bona fide* upon public servants, and *bona fides* of every such critic if assailed should not be determined by the public servant against whom the criticism is levied. Listen once more to Junius: 'They who conceive that our newspapers 'are no restraint upon bad men or impediment to the execution of bad 'measures know nothing of this country. In that state of abandoned 'servility and prostitution to which the undue influence of the Crown 'has reduced the other branches of the legislature, our ministers and 'magistrates have in really little punishment to fear and few difficulties 'to contend with, beyond the censure of the press and the spirit of 'resistance which it excites among the people.' The decision of the High Court, if maintained, is a direct blow to the maintenance of this censorial power, and if protests against the claim for such arbitrary power are unavailing, we must appeal to the Viceroy to extinguish the possibility of a recurrence of such a claim, by an immediate legislative enactment. We do not forget that the assertion of a similar claim to arbitrary power of this character in Ireland last autumn by Mr. Justice Lawson, by the imprisonment of Mr. E. D. Gray, M. P., elicited from Mr. Gladstone a promise for the amendment of the law in England, and hence we confidently appeal for a similar amendment here."

The law of India has now been made so explicit in excluding the power which the judges have, nevertheless, exercised, that no amendment is required. But as the Court has ignored the law under which it has lately been placed, what is necessary is that the Government of India should, through the Secretary of State, obtain the opinion of the Privy Council on the action of the Court.

Apart altogether from the legal questions involved in the summary trial for contempt out of Court, there is a very important practical question. Do these proceedings, as a matter of fact, uphold the dignity of the Court? Strong as our views are on the legal points, yet, if it appeared that by such proceedings the Court raised itself, or prevented itself from being lowered, in public esteem and confidence, we do not think that we should trouble ourselves to discuss the legal questions. We should be satisfied with a result that was manifestly for the public good, and should be content to leave lawyers to argue the legal bearings of the subject. Well, opinions may differ, but we express a very strong conviction of a very large portion of the

public when we say that the practical effect of such cases is, as a rule, a loss of dignity and of public esteem and confidence on the part of the bench. In the present case, the High Court has lowered itself in the estimation and confidence of the Indian people to a point which it has never before reached within the memory of the living. It is mere ineptitude to say that the effect ought not to be so, if it is so. And this is a very strong reason why, even if the Court legally possessed the power (which we hold it does not), it should let it fall into abeyance, and proceed in the well understood way prescribed in the Codes.

Sir Barnes Peacock's position—not a tenable one, we think, but even the *extempore* opinion of so able a judge is worthy of all consideration—as stated by him in the case against the *Englishman*, was this :—There can be no contempt which is not defamation: we are, therefore, bound to deal with the offence under the Penal Code; but the Penal Code does not lay down the procedure, and therefore the Court can adopt a summary procedure, but must not exceed the penalty fixed by the Code.

If we accept this as good law in 1869, it becomes clear in the first place that what we have been calling contempt out of Court is only another name for defamation. This is not a case of one act constituting two different offences,—the one offence being defamation, and the other contempt. In Sir Barnes Peacock's view, the offence is one, and it is defamation; for he acknowledged that the defamation penalty of the Code is the legal penalty for it. He held that to abide by that penalty was to try the offence under the Code, while he also held that nothing in the Code bound the Court to a particular procedure, and that it might, therefore, if it saw fit, proceed summarily.

Now, supposing that to be the sound legal position up to the 1st of January last, and then apply section 5 of the new Code of Criminal Procedure—"All offences under the Penal Code, &c."—the loophole by which Sir Barnes Peacock escaped in 1869 is now closed.—*Statesman, May 19th*, 1883.

The *Englishman*, in a leading article in its yesterday's issue, discusses "calmly and dispassionately" the question of the High Court's jurisdiction in cases of contempt out of Court. Although we cannot say that our contemporary has thrown any light on the subject, yet we welcome the article in the hope that other Anglo-Indian journals may now be led to discuss a question which is of vital importance to the press and the public. Our contemporary acknowledges that it is its duty "to resist every abuse of authority, and every invasion of the privileges of the Press," and "trusts" that it will "ever be found foremost in the "ranks of those who are prepared to devote " their noblest energies to confront and oppose " a tyrannical abuse of power in every condition." This sounds well: but, unfortunately, our contemporary has in the present case enlisted its "noblest energies" on the other side. We have been curious to know how the *Englishman* would reconcile its present attitude with its attitude in 1869.

when its own Editor was prosecuted for contempt, and when it stoutly questioned the Court's jurisdiction. The explanation now offered is not intelligible. "In the case against Major Fenwick," says our contemporary, "we challenged the powers of the Court, and at a considerable amount of sacrifice won a substantial victory for the press." But now, when a Bengalee Editor is in the position of Major Fenwick, the *Englishman* deems it "for the public advantage "and in the interests of the Press, that the highest judicial tribunal in India should receive public support in the performance of a necessary, though a painful, duty." But why this distinction is drawn we are not informed. "It is essential," we are told, "that the judges, whilst performing their public functions, should be protected from false and "malevolent aspersions." Perhaps, then, our contemporary means that what Major Fenwick wrote was not "false and malevolent," and that Surendra Nath Banerji's article was "false and malevolent," and that, therefore, it was right to challenge the Court's jurisdiction in the former case, but not in the latter. This is, of course, absurd. The character of the libel affects the question of the degree of guilt and the proper amount of punishment, but does not at all affect the question of jurisdiction. The *Englishman* must know perfectly well that if the Court had no jurisdiction in the one case, it had none in the other. If the *Bengalee's* article was false and malicious, the law provides for trial and punishment. The Editor might have been tried for defamation, and sentenced, if found guilty, to two years' imprisonment and fine. But the blackness of his guilt has nothing whatever to do with the question of jurisdiction, and this mixing up of the two either arises from mental confusion in the writer, or is intended to cause mental confusion in the reader. Our contemporary proceeds :—"If the principle were once admitted that every case *sub-judice* is to be subject to irresponsible discussion in "the public press, the serene atmosphere of Courts of justice would be rapidly destroyed, and the impartial administration of justice "would soon become an utter impossibility." This is another attempt to confuse the discussion. It is not necessary to go into the general question, as to the right of the Press to discuss pending cases. It is enough for the present purpose to say that the *Bengalee* did not discuss a case which was *sub-judice*. Not only did it not "discuss" the case, but it did not even refer to its merits. Its remarks were made on an interlocutory order which had exhausted itself, and it was impossible that they could have any effect on the course of justice. Our contemporary goes on in a few sonorous sentences to insist upon the necessity that exists that our highest Courts should be able to exercise this jurisdiction. But the *Englishman* has already taken credit for having challenged this very jurisdiction in 1869, and having "won a substantial victory for the Press." Now, it has discovered ever so many lofty reasons why the Court must possess this jurisdiction. How the *Englishman* can in one and the same article claim

credit for challenging, with substantial success, the powers of the Court, and so eloquently assert that the Court possesses, and ought to possess, these very powers, is a puzzle which we must leave others to explain.

What follows has a greater appearance of argument. The McDermot case is referred to, and the conclusion is drawn that the High Court, as a Superior Court of Record, has the jurisdiction claimed inherently. We need not dispute this, seeing that our contemporary goes on to admit that the power may be abridged or abrogated by statute. Nor is it necessary to waste time on his argument that the Penal Code did not abridge the power, because the argument is so framed as to apply only to the offence (admitting it to be an offence) of discussing a case *sub-judice*. We may remind our readers, however, that in the *Englishman* case, Sir Barnes Peacock admitted that in the cases of contempt the Penal Code had limited the power of the Court. He contended that the Court was left free to follow its own procedure, but was bound not to exceed the penalty fixed by the Code. Granting, for the sake of simplifying the argument, that Sir Barnes Peacock was right, we have only to show that the new Criminal Procedure Code abrogates the power as to procedure. We have proved that it has done so: but the *Englishman* in an off-hand way tells us that "a cursory examination of Section 1 of the Code will conclusively show the fallacy of this argument." We certainly know that a close and logical examination of Section 1 conclusively establishes the invincibility of the argument, and we venture to advise our contemporary never again to be satisfied with "a cursory examination" of a provision of law. It must indeed, be a very cursory examination which overlooks a clause in the section which governs all the rest. Says our cursory contemporary :—"This section specially provides that nothing contained in it shall affect any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law in force ;" but he omits the clause, in the absence of any specific provision to the contrary." The letter of our correspondent "K." in our yesterday's issue showed very clearly the effect of this clause. Contempt is admitted to be defamation. Chapter XXI of the Penal Code deals with defamation. And Section 198 of the Criminal Procedure says that "no Court" (not even the High Court) "shall take cognizance of an offence under Chapter XXI, "except upon a complaint made by some person aggrieved by such offence." Further, a "complaint" is explained to mean "an allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code." Here, there is "a specific provision to the contrary," which most distinctly abrogates the power claimed by the High Court to proceed summarily in such cases. This is not the only answer to the argument based on Section 1, but for our present purpose it is the most effective, and it is complete enough to render any other unnecessary. *Statesman, May 23rd,* 1883.

The *Englishman* replies to us on the question of jurisdiction. Unfortunately, our contemporary is only beginning to study the question, and is still in the stumbling stage. He, however, states one of our arguments correctly enough, thus: "Contempt is defamation; the Penal Code deals with the offence of defamation, and the Criminal Procedure Code provides the exclusive procedure for trial. The High Court, therefore, in exercising a different procedure, has exercised a power which has been abrogated by a special statutory provision." The *Englishman's* reply is that contempt is not defamation, and of course all the rest of the argument topples down. Well, we are quite willing to reason on the subject. When this controversy began, we were disposed to think that contempt was an offence distinct from defamation. There are, as we all know, contempts that are not defamation. They are specified in the Penal Code, and a procedure for them is provided in the Criminal Procedure Code. But apart from these, our contemporary appears to know of other contempts that are not defamation. We ourselves, it seems, were guilty of one on Wednesday. (Does our contemporary wish the Court to take the hint ?) New, the truth is that the *Englishman* quietly assumes that whatever old English law recognised as contempt is, therefore, contempt in India. He ignores the fact that India is ahead of England in this matter. There they are at present toiling after us, and by-and-by they may probably have a tolerable law of contempt. Is it not curious that, just at the moment when they are trying in England to bring the law into shape and into harmony with modern principles of justice, we in India, who have our completed codes, should want to go back to old English law for a list of contempts in order to add them to the offences provided for by the legislature ? Those contempts that are not defamation, and that are not provided for by the code, are not at all recognised by our Indian law. When our contemporary assumes that they are recognisable and punishable by the High Court, he assumes the very point in dispute. We, for our part, prefer to agree with Sir Barnes Peacock, who said that if there was no defamation, there could be no contempt (that is, except in the cases defined in the Penal Code). He held that the Court could proceed against defamation summarily as contempt, but that it could not exceed the penalty appointed for defamation by the code. No criticism in a newspaper, if it was written in good faith, could, he held, be a contempt. Well, we think we may adher to our first premise, that what is called contempt, but is not specified under that name in the Penal Code, is nothing more or less than defamation. In the particular case of the *Bengalee*, it is acknowledged that the offence was defamation. It is so described in the judgment, and, therefore,even our contemporary's argument admits that the Editor of the *Bengalee* was illegally proceeded against.

But now, for the sake of the general argument, let us grant that there may be contempts (not specified in the Penal Code) which are not defamation. Our argument then takes the following form :—If the

offence is defamation, it is an offence under the Penal Code, and the Criminal Procedure Code provides the exclusive procedure. If it is not defamation, but is an offence under section 175, 178, 179, 180 or 228 of the Penal Code, the Criminal Procedure Code, section 480, provides the procedure. If it is an offence under any other law, the Criminal Procedure Code still provides the procedure (section 5, clause 2), unless it is provided for by some other enactment. Thus it is impossible to get outside the bounds of the Criminal Procedure Code.

One pargraph in our contemporary's article is so illustrative of his lack of familiarity with the subject, and of his loose way of reasoning, that it is desirable to quote it. It is as follows :—

"If, moreover, the legal position were correct that even where a contempt is defamation, the summary protective jurisdiction of the High Court is taken away, we should in that case be lodged in this absurd anomaly. In the event of any one creating a mere disturbance in Court, a High Court in the exercise of its inherent jurisdiction may commit for contempt. But if this disturbance were to be coupled with defamatory abuse of the Judge, then the Court would be at once disarmed, and would be powerless to commit. If, in the face of all argument, our contemporary be still desirous of maintaining his untenable position, we are afraid that he must look back again, and endeavour to seek for more substantial premises."

" In the event of any one creating a mere disturbance in Court, a High Court *in the exercise of its inherent jurisdiction* may commit for contempt." The words we have italicised are erroneous. In such a case the Court may commit for contempt, but not in the exercise of its "inherent" jurisdiction. It must do so under section 480 of the Criminal Procedure Code, and may punish the offender by a fine of Rs. 200, or a month's imprisonment in default. " But," adds our contemporary, " if this disturbance were to be coupled with defamatory abuse of the Judge, then the Court would be at once disarmed, and would be powerless to commit. " Not at all. It could indeed, do nothing in the exercise of an imaginary " inherent jurisdiction," but such a case is fully provided for by the Codes. Our contemporary has evidently never read, even cursorily, sections 480 and 482 of the Criminal Procedure Code. We have just stated what the Court could do under section 480. But section 482 expressly provides that, if the Court, on account of any aggravation, such as that supposed by our contemporary, thinks the penalty provided by section 480 insufficient, or thinks the offence should be otherwise dealt with, it may forward the case, or, if necessary, the offender, " under custody," to a Magistrate to be dealt with by due course of law. Thus the illustration brought forward to show that our position is untenable, shows in fact that our contemporary writes in unmitigated ignorance of those specific provisions of the law by which the powers of the Court are regulated. In the case which he supposes, the summary

powers of the Court are expressly limited to detaining the offender in custody till the rising of the Court, and fining him Rs. 200. If it thinks this punishment unsuitable or insufficient, it may cause the disturber of the Court to be tried under section 228 of the Penal Code, which admits of a penalty of six months' imprisonment or a fine of Rs. 1000, or of both fine and imprisonment. If he has been guilty, not only of disturbing the Court, but of defaming the Judge, he may be tried under section 499 of the Penal Code, and imprisoned for two years. Our contemporary could not have provided an illustration better fitted to show how the summary powers of the Court have been expressly limited by statute, and how amply the codified law of India has provided for such offences.—*Statesman, May 26th*, 1883.

The *Englishman* "desires to correct" us in another point. "The case which gave rise to the contempt is still pending." We are quite willing to discuss any fair or even plausible argument with our contemporary. But we have not time to discuss arguments which he must know as well as we do have no application. We shall let a native contemporary, the *Brahmo Public Opinion*, answer him :—

"The suit pending in Court is an administration suit. The proceedings about the idol arose out of an application by the plaintiff for an order upon the defendant to deliver up a certain idol belonging to that estate, which it was alleged the defendant had removed from the family house. This was therefore a separate application altogether, having nothing to do with the merits of the suit which was pending. This interlocutory proceeding terminated, so far as the Original Court was concerned, with the order committing the defendant to jail for disobeying the order of the Court. The comments made had reference only to the production of the idol in Court, and not to the merits of the case then 'depending.' They could not in any way 'obstruct the course of justice or prejudice the trial of the suit, which, according to Justice Blackburn's definition of contempt of Court in Skipworth's case were necessary ingredients of contempt."

The *Englishman*, by a stretch of a powerful imagination supposes that the Chief Justice might have been weak enough to transfer the case to another Judge, because of the *Bengalee's* remarks. He might just as reasonably suppose that the roof of the Court might have fallen in. Even in England, the remarks would not have been treated as contempt, because of the case being pending. But would our contemporary be surprised to hear that even discussion of a case which is *sub-judice* is not contempt in India? The question has nothing to do with the present case, but it is one we are prepared to discuss.—*Statesman, May 26th*, 1883.

We have hitherto, in discussing the question of the High Court's jurisdiction in cases of contempt out of Court, confined ourselves to the endeavour to demonstrate that our Indian High Courts possess no such jurisdiction as that which has just been claimed and exercised by the Calcutta High Court. But we have no doubt that the Court

honestly believed itself to possess that jurisdiction, and we will now enquire whether the Court, honestly believing itself to possess the same powers in such cases as the Courts of Westminster, exercised those powers in a manner which can be justified by English precedents. Towards the close of the judgment delivered in the case of the Editor of the *Bengalee* by the Chief Justice, we find the following reference made to the judgment of Mr. Justice Mitter :—

" We are, of course, fully aware of the precedents to which that learned Judge refers, but, in the first place, we think the facts of those cases are very different from the present; and, in the next place, we find ample precedents in England in cases of gross libel where a more severe punishment has been awarded."

We have had cause to regret their lordships' omission to specify any of the "ample precedents" referred to, because it has imposed upon us the labour of searching out the English precedents for ourselves. Fortunately for us this labour has been very much lightened by a historical sketch of the English contempt cases given by the Irish Master of the Rolls in 1846. As the authority of the Master of the Rolls is not likely to be questioned, we shall give the following somewhat lengthy extract from his judgment in the case of Birch *vs.* Walsh, 10 Irish Equity Reports, 93, decided in 1846 :—

"The cases in which Courts of Equity have exercised the authority of committing parties for contempt of Court, may be divided into three clauses :—

"The first class may be described in the language of an eminent person, afterwards on the English Bench, thus :—"Where the Court which issues the attachment has awarded some process, given some judgment, made some legal order, or done some act, which the party against whom it issues, or others on whom it is binding, have either neglected to obey contumaciously refused to submit to, incited others to defeat by artifice or force, or treated with terms of contumely or disrespect in the face of the Court or of its minister charged with the execution of its acts." *

"There may be some other cases of similar nature falling within this class, although not exactly within the above description; and it is clear that a Court of Equity, as well as every other Court, must be entrusted with power to enforce its orders. There is of course no ground for contending that the present case falls within that class.

"The second class of cases in which Courts of Equity have exercised the jurisdiction of committing for contempt are those in which letters or pamphlets have been addressed to the judge who had to decide upon the case, with the intention either by threats or flattery, or bribery, to influence his decisions. † The earliest case of this

* Clearly the case of the *Bengalee* does not come under this head. —Ed., *S.*

† Nor under this head.—Ed., *S.*

class is Martin's case, which was decided by Lord Hardwicke in 1747, and is reported in a note to 2 Russ. and My. 674. In that case Thomas Martin wrote a letter to Lord Hardwicke mentioning that a bill in Chancery was threatened to be filed against him, and enclosing a banknote for £20, of which he desired his lordship's acceptance. A rule to show cause was made why he should not be committed; which afterwards, in consideration of his submission to the Court, was discharged. In the case of James Macgill [2 Fow. Ex. Prac. 404], which case was decided in 1748, Macgill was committed for writing to the Lord Chief Baron concerning a cause then depending in that Court, and making a scandalous offer relating to the judgment to be given by the Court.

"In the case of *ex parte Jones* [13 Ves. 237] a pamphlet was published, dedicated to the Lord Chancellor, reflecting upon the conduct of persons who were acting under orders of the Court in the management of the affairs of a lunatic, and the author and printer of the pamphlet were committed to the Fleet. Lord Erskine, in giving judgment in that case, after adverting to "cases of constructive contempt depending upon the inference of an intention to obstruct the course of justice," added :—" In this instance that is not left to conjecture, and whatever may be said as to a *constructive* contempt, through the medium of a libel against persons engaged in controversy in the Court, it never has been or can be denied that a publication, not only with an obvious tendency, but with the design to obstruct the ordinary course of justice, is a very high contempt." Lord Erskine, after some observations on the pamphlet itself, proceded thus :—" But upon the dedication, this is not a case of *constructive* contempt. In this dedication the object is avowed : by defaming the proceedings of the Court, standing upon its rules and orders and interesting the public, prejudiced in favour of the author by his own partial presentation—to procure a different species of judgment from that which would be administered in the ordinary course, and by flattering the judge to taint the source of justice. "This pamphlet," his lordship added, "has been sent to me."

"The last case of this class is *Mr. Lechmere Charlton's case*, decided by Lord Tottenham in 1836.

"Mr. Charlton was convicted for writing a letter to Mr. Brougham one of the Masters in Chancery ; and also for having written a letter to his lordship. Lord Tottenham, in giving judgment, said, "every insult offered to a Judge, in the exercise of the duties of his office, is a contempt ; but when the writing or publication proceeds farther, and when, not by inference, but by plain and direct language, a threat is used, the object of which is to induce a judicial officer to depart from the course of his judicial duty, and to adopt a course he would not otherwise pursue, it is a contempt of the very highest order. The writer of these letters supposes Master Brougham to have finally made his

report, and that from that report there was no appeal ; and the avowed object of the letter to the Master is to induce him to alter his decision, in the absence of the opposite party, by holding out threats ; and concluding by saying, that if the Master would depart from the decision to which he was supposed to have come, and come to one directly opposite, then that letter should never be made public, and the Master should not be disturbed by any further remonstrance from the writer ; this is intelligible language which no one can misunderstand."

"In all these cases the contempt consisted in this—that there was a direct attempt by written communications to the judge, as observed by Lord Tottenham, to taint the source of justice, and to obtain by such communications a result of legal proceedings different from that which would follow in the ordinary course. Lord Tottenham, in the case I have last referred to, appears to have considered a contempt of this class as equivalent to an insult offered to a Judge in the exercise of the duties of his office, and possibly it might be considered that these cases fall within the first class I have already adverted to. It is, however, clear in my opinion, that the authorities upon this second class, which the plaintiff's counsel have relied upon, have no application whatever to the question which I have to decide.

"The third class of cases in which Courts of Equity have committed for contempt are those adverted to by Lord Erskine in the case *ex parte Jones*, that is to say, "cases of *constructive* contempt depending upon the *inference* of an intention to obstruct the course of justice."*

"The earliest case of this class is, I believe, the case of ***Poole*** vs. ***Sacheverell*** [1 P. Wms, 976] decided by Lord Macclesfield in 1720. In that case a party in a suit published an advertisement, offering a reward of £100 to any person who should discover and legally prove that two persons who appeared by the Fleet register to have been married, on a certain day, by certain names were then married, and that before and after the marriage they were really called and known by those respective names. The party submitted to the Court, and the Court said it believed there was no evil intention ; but as the act had a tendency to produce false evidence, and as the justice of the Court and of the nation was concerned, the party must in justice and for example's sake stand committed.

"The next case in point of date, of a ***constructive*** contempt, is the case of ***Roche*** vs. ***Garvan*** [2 Atk. 469 ; S.C. 2 Dicks. 794] decided by Lord Hardwicke in 1742. In that case an application was made for an attachment against the printers of two newspapers, for publishing a libel against the defendants, Messrs. Hall and Garden ; and reflecting likewise upon Governor Mackray, Governor Pitt, and others, taxing

* The offence of *Bengalee*, if it was contempt at all, must come under this head. --ED., S.

them with turning affidavit men, &c., in the cause then pending between Mrs. Roche and the said Messrs. Hall and Garden. In the course of Lord Hardwicke's observations he stated, "I believe there is no body who is conversant in the proceedings of this Court but must know that the expression, 'affidavit men,' means persons who are ready upon all occasions to make affidavits without regarding whether they have any cognizance of the facts."

"His lordship then observed upon the libellous paragraphs in the publication affecting the defendants, and he added. "There are three different sorts of contempt—one kind of contempt is scandalising the Court itself: there may be likewise a contempt of this Court in abusing parties who are concerned in causes here. There may be also a contempt of the Court in prejudicing mankind against persons before the cause is heard," The printers of the newspapers were committed.

"The next case of constructive contempt was an anonymous case decided by Lord Hardwicke in 1754, who committed the Editor of a newspaper for publishing an advertisement relating to an answer put in by the defendant. The name of that case was *Cann* vs. *Cann*, and a copy of the advertisement and notice of motion will be found in the second volume of *Turner and Venables' Chancery Practice* 5th Ed., p. 231. The course pursued of committing for constructive contempt led to much observation. Mr. Hargrave observed:—"If the doctrine of contempts be thus wide—if any of the great Courts of Westminster Hall may construe what they please into contempts, and may, under that denomination, without trial by jury, convict all persons of crime, and have also an indefinite power of punishing by fine and imprisonment; and if all this, when done, be unappealable and unexaminable, what is there but their own wisdom and moderation, and the danger of abusing so arbitrary a power, to prevent any Court, under shelter of the laws of contempts, from practising all monstrous tyranny which first disgraced, and at length overwhelmed, the Star Chamber?"

"Mr. Erskine and others wrote on the same subject; and it is stated in *Turner and Venables' Chancery Practice*, vol. 2, p. 231, 5th Ed., which I have already referred to, that in *Purcell* vs. *M'Namara*, Lord Erskine, C., refused to commit the defendant in a similar case to the case of *Cann* vs. *Cann*, attended with very aggravating circumstances. I have been unable to find any report of the case of *Purcell* vs. *M'Namara*.

"It is added, that in a subsequent case of *ex parte Crowe*, Lord Erskine committed.

"The latter case is, I presume, the case adverted to by Lord Lyndhurst in *ex parte Van Sandan* [1 Phillips' Rep. 609] from which it appears that Thomas Crowe, and Mary his wife, and the printer were committed for a publication, accompanied with reflections on the Court and the parties: and as that case was decided on the 20th of December 1806, the same day as the case of *ex parte Jones*, reported in 13 *Vesey*,

237, and as the facts appear to correspond, I presume that *ex parte Jones* and *ex parte Crowe* are the same case. I have already observed that *ex parte Jone* was not a case of constructive contempt.

"No cases of committal for constructive contempt is reported from 1754 down to the case of *Litter* vs. *Thompson* [2 Beav. 130] decided by Lord Langdale in 1839. In that case an injunction had been obtained on the affidavit of the plaintiff and two other persons. Subsequently to this, and pending a motion to dissolve the injunction, various very violent articles appeared in the *Gardener's Gazette* reflecting on the plaintiff and the witnesses who had made affidavits in support of the injunction, and characterising the Chancery proceedings as vexatious and unprincipled, and representing the affidavits as containing glaring misrepresentations, which the editor believed and heartily hoped would lead to an indictment for perjury.

"Lord Langdale, on the acknowledgment by the party of his error, stated that justice would be satisfied by obliging the editor to pay all the costs.

"Thus, there are only four cases reported in which there have been attachments against parties for constructive contempt, two of them decided more than a century ago ; the third, the case of *Cann* v. *Cann*, decided in 1754, and which, if the statement in *Turner and Venables' Practice* is correct, was overruled by Lord Erskine in the case of *Purcell* vs. *M'Namara*; and the fourth in which Lord Langdale did not issue the attachment, but was satisfied with the costs being paid.

"In the case of *Pooe* vs. *Sacheverell*, the party was committed, because the act done had, as Lord Macclesfield thought, tendency to produce false evidence. In *Roche* vs. *Garvan* the witnesses examined were called "affidavit men," which was in effect an imputation that they had sworn falsely ; and in *Littler* vs. *Thompson*, perjury was attributed to the plaintiff's witnesses.

"In all the cases, therefore, in which there has been a committment for constructive contempt, except the case of *Cann* vs. *Cann*, the publication was either calculated to produce false evidence, or attributed perjury to witnesses pending the suit.

"The affidavit of the plaintiff, in order to bring his case within these authorities, states that the publication is, as he believes, directly calculated to obstruct the free course of justice, and to intimidate persons from giving evidence material in this cause, and to excite ill-feelings against the plaintiff.

It is not stated that the plaintiff intends to examine any witnesses. If he does intend to examine witnesses, I am not prepared to draw the inference which he has drawn from the publication, that it will deter parties from giving evidence, or that it was so intended.

It is perfectly clear it will not have that effect, if the only witnesses to be examined should be witnesses to prove documents.

"The case therefore comes to this:—A libel has been pulished by the plaintiff pending the procedings in this cause. The Court has no authority whatever to commit for a libel, unless it is calculated to obstruct the free course of justice. I am not satisfied that it is so calculated, and I am sure it would not have that effect either in this Court or the Court of Chancery.

"The plaintiff seeks that I should carry the doctrine of constructive contempt further than it ever has been carried in any reported case; and I think it is much more proper that the plaintiff, if he shall be so advised, should proceed by action, information, or indictment, in which proceedings the party accused would have the benefit of a trial by a jury.

"I shall, therefore, make no rule on the motion."

Thus, the history of committments for contempt in England is brought down to 1846, and it will be seen that it affords no precedent for the action of the Court in the case of the ***Bengalee.*** The contempt committed by the ***Bengalee*** was, if anything, constructive contempt, and prior to 1846 there were only four reported cases of such contempt, none of which have any resemblance to the present case. One of them is believed to have been overruled, and in the other three, "the publication was either calculated to produce false evidence or attributed perjury to witnesses pending the suit." And the Master of the Rolls concludes that "the Court has no authority to commit for a libel unless it is calculated to obstruct the free course of justice." It has not, we believe, been alleged that the ***Bengalee's*** article was so calculated.

We have to add that since 1846, when the Master of the Rolls decided the case of ***Walsh*** vs. ***Birch***, the only cases in England in which contempts out of Court were dealt with are ***Regina*** vs. ***Lefroy***, which we have already referred to, and two cases arising out of the Tichborne trial—***Regina*** vs. ***Onslow*** and ***Regina*** vs. ***Skipworth***, both of which contempts had a direct tendency to influence the result of a pending case."

We believe we have exhausted the English precedents, and it will be seen that they are by no means ample, and that not only do they not apply to the case of the ***Bengalee***, but they actually exclude that case. The Editor of the ***Bengalee*** was not punished for attempting to influence the result of pending case, but for libel, and we have quoted the authority of the Irish Master of the Rolls to the effect that the Court has no authority, even in England, to commit in such a case. Let it be remembered that we entirely deny—and we believe have conclusively shown—that the Indian High Courts do not possess the powers of the Courts of Westminster in such cases; but, in order to meet our antagonists at all points, let us now, for a moment, grant that they do. This being granted, it must now be admitted, even by those who have not been able to follow us on the question

of jurisdiction, that the High Court has acted *ultra vires.* For the English precedents show that the Court has no authority to commit for libel unless it has a direct tendency to influence the result of a pending case. The article in the *Bengalee* had no such tendency. Therefore, if that article was libellous, it ought to have been dealt with as an offence under section 499 of the Penal Code, and the exclusive procedure is prescribed by section 198 of the Criminal Procedure Code.

We may now give in a sentence the sum of the whole argument. The summary jurisdiction exercised by the Court in this case was abrogated by sections 2 and 5 of the Penal Code ; if any one doubts this, it has been demonstrated that the jurisdiction could not survive the application to the High Courts of sections 5 and 480 of the Criminal Procedure Code : those whose cling, in spite of all reason, to the belief that the "inherent power of a superior Court of Record" still remains in our High Court, must now acknowledge that, even in the exercise of that inherent power, that Court has strained it far beyond the limit marked out by the English precedents. *Statesman*, *28th May*, 1883.

Perhaps some reply is necessary to the *Englishman's* remarks in its yesterday's issue on the contempt case, though, as our contemporary has "funked" the discussion, there is not much left for us to reply to. We showed in our last article that the *Englishman*, in attempting to argue the question of jurisdiction without the preparation of studying it, had displayed a somewhat remarkable lack of knowledge of the law. Our contemporary now practically admits that our arguments are unanswerable, or at any rate that he is unable to answer them. If our "account of the state of the law is accurate and complete, the case," he admits, "is one which leaves no room for doubt." This is a considerable admission, and is really as much as we have a right to ask from our contemporary, or from any one who has not studied the question. Of course, people will still doubt for various reasons, and the *Englishman* states one reason which no doubt will carry some weight. Why, asks the writer, if the case is so strong, have not the defendant's advisers applied to the High Court for a review ?—and because they have not applied for a review, he evidently infers that the defendant's advisers do not share our views as to the Court's want of jurisdiction. This, of course, shirks the legal argument, but we do not complain of that, any more than we complain of those who say that surely a Full Bench of the High Court must know the law better than a single layman like the Editor of the *Statesman.* This is a perfectly reasonable position for those to take up who have not studied the question for themselves.

We may now take it for granted, then, that we have exhausted the legal argument, and that no further reply is likely to be forthcoming. Apart from the legal argument, there are now three objections against our position which opponents may fall back upon. The

first is, if the Court had no jurisdiction, why did the Counsel for the accused, who is one of the ablest members of the bar, refuse to argue the question? It might be enough for us to say that we do not know: we have had no communication on the subject with Mr. Bonnerjee. We think it a pity that he did not argue the question; and his refusal to do so is somewhat mysterious, seeing that he allowed it to be raised in the prisoner's affidavit. We must admit that the fault does not lie with Sir Richard Garth. The Chief Justice drew Mr. Bonnerjee's attention to that portion of the affidavit which showed that the defendant intended to raise the question of jurisdiction, and Mr. Bonnerjee replied that "even if time were granted, he would not be in a position to argue the question, and that, if he were in a position to do it, he would not." That seems to us a very remarkable utterance on the part of a barrister who had accepted the defendant's brief, and allowed the question to be raised in the affidavit. It is a fact that the defendant did desire to raise the question of jurisdiction. It is also a fact that his attorney offered briefs to almost all the leading practising members of the bar. Some of these declined to accept on the ground that they had already been consulted by the Court; others declined absolutely; others declined because they could not argue such an important question at 24 hours' notice. One barrister, who was willing to argue the question, was suffering from fever, and advised an application for a week's adjournment to enable him to appear. A prayer for adjournment was therefore inserted in the affidavit, and Mr. Bonnerjee allowed that prayer to stand, but he, as Counsel, refused to ask the Court for an adjournment. No doubt the conduct of Mr. Bonnerjee and of those members of the bar who declined the brief must have been in accordance with professional etiquette; but, that being granted, we must say that the etiquette of the profession is less perfect than we have hitherto supposed. If the question which the defendant had wished to raise had been an utterly absurd one, we might be able to understand the refusal of all the members of the bar to argue it; but that it is at least an arguable question is shown by the fact that Mr. Paul and Mr. Kennedy did ably argue it on the *Englishman's* behalf in 1869. Their argument is now strengthened by the provisions of the new Procedure Code, and yet no member of the bar could be found to argue it on behalf of the Editor of the *Bengalee*. The consequence was that the prisoner was placed in a very awkward and equivocal position. Why Mr. Bonnerjee declared that he would not have argued the question of jurisdiction even if he had been in a position to do so, we do not know; but a waiver by counsel could not confer jurisdiction on the Court, and Mr. Bonnerjee's curious conduct, is very far from affording even a presumption that the Court has jurisdiction.

The second objection taken to our position is that a Full Bench of the Court is more likely to be right than we are. Well, we are not going to dispute this assertion. We are even willing to strength-

on it, by giving prominence to the fact that the Court consulted the leading members of the bar (a very unfortunate thing for the prisoner, as we have already shown), and it does seem unlikely that a Full Bench, acting under the advice of the leaders of the bar, should have claimed and exercised a jurisdiction which does not belong to it. We can only say that very unlikely things do sometimes happen, and we believe that on this occasion the unlikely thing did happen. It would be something like insolence to make this assertion without the strongest possible grounds; but those who have read our articles on the subject will at least admit that we have supported our position by a very strong array of arguments and authorities. We still think that an answer to our arguments would be better than an appeal to the infallibility of the Bench, or the wisdom of counsel.

The third objection is that which is now raised by the *Englishman*. If the case is so strong, why do not prisoner's advisers ask for a review? As we are not the prisoner's advisers, we really do not know, and we are in no way responsible for what they may do or advise. We have heard that they did at one time propose to ask for a review, but thought better of it. Our contemporary will see that we are willing to admit every fact that seems to tell in favour of his inference. If they thought better of it, he will say, that must be because they did not share the *Statesman's* view. Perhaps so; but as we already have a Full Bench of the High Court and the leading members of the bar against us, it need not stagger us even to find that the prisoner's advisers, whoever they may be, are against us also. We are not even staggered by the fact that the *Englishman* is against us, for we remember that the *Englishman* took up our position when its own Editor was at the bar, though the position was not so manifestly strong then as it is now. However, though we cannot say what reasons the prisoner's advisers may have for not asking for a review, there are several possible reasons other than disagreement with us. If we were ourselves being tried for contempt, we should, notwithstanding that we have gone pretty fully into the subject, hesitate to act as our own counsel before a Bench of the High Court, for we are not accustomed to forensic contests, and might lose our presence of mind, and stumble in our arguments. And if all the leading members of the bar refused to take our brief, we might think it better, under protest, to submit to the Court. When the bar turns its back on a defendant, it is hardly fair to demand why he does not argue his case. But suppose that the prisoner could now find counsel willing to argue his case, and were to ask for a review, it is by no means certain that the Court would give a decision on the question of jurisdiction. There are other questions which would have to be raised in reviewing the case, and on any one of these, the Court might say that sufficient cause had been shown why the remainder of the sentence should be remitted, and as it had determined to release the prisoner, it did not think it necessary to go into the question of juris-

diction. Sir Barnes Peacock in this way avoided giving a decision on the question, though it had been so well argued before him. Now, the question of jurisdiction over-shadows all others in importance, and it is better that the prisoner should spend his two months in jail than that this question should be burked, especially as there is a hope that it may be dealt with in another place. We have no authority to say that this is the view taken by the prisoner's advisers. We only give it as a possible view. But whatever the reasons of their abstinence may be, we have nothing to do with it, and our arguments cannot be touched thereby. *Statesman*, 31*st May*, 1883.

Our correspondent A. Y. F.* appears to write in support of the view of a former correspondent, COMMON SENSE, of which he says we did not dispose in our remarks on COMMON SENSE's letter. Now, what was that view? It was that our articles on the question of jurisdiction were "beside the mark"; that the question of jurisdiction was "the least important question in the case"; that the all-important question was whether or not the Editor of the *Bengalee* was guilty of moral wrong-doing; and that it was our duty as a public journalist to leave the question of jurisdiction alone, and to argue whether Mr. Bonnerjee was morally right or morally wrong in writing as he did. More briefly stated, his view was that, if Mr. Bonnerjee was morally wrong, the question whether or not he was legally punished was of little public importance. We said it would be absurd with a person who held this view, and our article, though suggested by the letter, was professedly not a reply to it. The only reply we thought the letter worth was given in a foot-note, and was, we think, a complete *reductio ad absurdum* of the argument. To infer from that foot-note, as A. Y. F. does, an admission on our part of Mr. Bonnerjee's guilt, either moral or legal, is surely illogical. All he can logically infer from it is, that we hold, as we certainly do, that the importance of the question of jurisdiction is not affected by the question of guilt. A. Y. F. does not himself hold COMMON SENSE's absurd view; for he admits the question of jurisdiction is one of great public importance. That is precisely what COMMON SENSE denied, and what we asserted and tried to demonstrate. If we have failed, we are very sorry for it, but it is at least some satisfaction to know that A. Y. F. agrees with us.

But A. Y. F. charges us with endeavouring to deny Mr. Bonnerjee's "moral guilt," as well as with admitting it in the foot-note. We neither admitted it in the foot-note, nor denied it elsewhere. We have never discussed the question of "moral turpitude." Any one who has read our articles on the contempt case must have seen that we have dealt with the legal, not the moral, aspects of the case. But we have incidentally admitted that Mr. Bonnerjee did wrong in writing as he did, and A. Y. F. will read every word we have written on the subject without finding any attempt to prove that he did right. We have

* See A. Y. F's letter, Statesman 13th June, 1883.

endeavoured to prove that the Court had no jurisdiction to punish him summarily for contempt: we have argued that, if he was guilty, he ought to have been dealt with defamation according to the Codes: and, as a rule, we have, in our arguments, left the question, whether or not he was really guilty of libel, an open one, because it does not affect our main contention. We have, however, not altogether refrained from discussing the question of minor importance, whether or not he was guilty of the legal offence of defamation. But we have not only written less, but also less confidently, on this question than on the other. It is a question for a judge and jury; but we have given reasons which incline us to the opinion that a jury would, or should, have acquitted him. In our opinion, there was no ground to infer want of good faith in the writer of the *Bengalee's* article. As we have said, the question is one which would be best decided by a jury; yet we do not conceal that our own opinion is that the article did not constitute an infringement of any law—that the Editor of the *Bengalee* was not guilty of any legal offence. That is merely our opinion, and we do not claim to have established it by undeniable proof. But it should be remembered that the assertion of Sir Richard Garth that the accused was guilty of libel, was nothing more than an expression of opinion. The law does not empower the judge to decide that question. Nor need we be accused of presumption in placing our opinion against that of the judges of the High Court. They formed their opinion in haste, and gave a decision on a question which they had no legal right to decide; we have formed our opinion at leisure, with the proceedings of the Court and all legal authorities to consult, and we give it as an opinion merely, fully admitting the possibility that a jury might decide otherwise.

But in expressing the opinion that the Editor of the *Benglee* committed no legal offence, we do not, as our correspondent alleges, deny his "moral guilt." We deny "moral turpitude," as we think the phrase absurdly inapplicable to the degree of guilt in this case. But if we do not deny "moral guilt," neither do we unreservedly admit it. We should prefer to avoid the purely ethical question. How far the term "moral guilt" is applicable to the state of mind which permits a man—who has no intention to do evil, but rather a wish to do good—to do a rash and inconsiderate act when he ought to be extremely cautious and considerate, we shall not attempt to say. How far a man of warm temperament is "morally guilty," when, in expressing an entirely honest, but let us say mistaken, opinion about another, he uses stronger language than the occasion justifies, it may also be difficult to decide. But we may say frankly that we are quite unable to see that the Editor of the *Bengalee* was guilty of anything worse than of forming a conclusion somewhat too hastily, and thereupon expressing himself in too strong and ill-considered terms. We have not cared to write much on this aspect of the case, because it is impossible to fully justify one's conclusions without treating of a great

many facts and considerations which could only be fairly set forth, in the light of evidence, in the course of a public trial in Court; and this is one of the strongest reasons for regarding the summary proceedings as a cruel wrong. But we have no desire to conceal our opinion. We do not believe that the Editor of the *Bengalee* had any wish or intention to assail the dignity or reputation of the High Court. We do not believe that he intended to be unjust, or for a moment suspected that he was being unjust, to Mr. Justice Norris. We believe he wrote in perfect good faith, in the conviction that Mr. Norris had insulted the religious feelings of orthodox Hindoos. It was a pity, no doubt, that he committed this error of judgment, and it is a pity that so great a multitude of his countrymen still hold to his error, in spite of his own recantation of it. But for this Mr. Norris is himself in some measure to blame. He has allowed himself on several occasions to say things in public from which the Bengalees have inferred that he regards them with contempt and dislike, and is extremely ready to give expression to these feelings. Unless driven to it, we have no wish to pursue the subject further in this direction, but we state again our opinion that an error of judgment and an inconsiderate choice of language make up the whole of the offence of which the Editor of the *Bengalee* was guilty, and that neither falsehood nor malice, nor a desire to insult the High Court, had any part in it.

We regard it as unjust and unwarrantable to drag into the question a consideration of the conduct which led to Mr. Bonnerjee's removal from the Civil Service. He denied, and we believe still denies, that he was guilty of any dishonesty or falsehood. His judges disbelieved him, and his countrymen believe him. His assertion of his innocence was looked upon as the worst part of his offence. This is somewhat hard *if he was innocent*. We do not assert that he was, but we are far from being convinced that he was not. However that may be, his life for the past eight years or more has been lived in a very public manner, and has been remarkably free from reproach. As a municipal commissioner he is an example of public spirit and disinterestedness, as we believe the present Chairman of the Corporation would testify. The Government of Bengal recognised the merit of his public character by recently appointing him an Honourary Magistrate, and it is safe to conclude that a dismissed public servant would not have been so appointed if his public career had not been conspicuous and meritorious enough to put him far above the need of our "certificate." After that, we think it is neither just nor generous to go back upon the old offence for which he was officially condemned. We say nothing about his work as a political leader, agitator, or demagogue (our correspondent can choose the term), because the worth we put on that will depend on the view we take of it. But it is highly considered by his countrymen. He has for years been one of the most popular teachers of youth in Calcutta. He is a teacher in one of our principal missionary institutions, and, though not a Christian, has won the highest respect

of the Christian missionaries who enjoy and prize his services. We believe they sympathise with him now as warmly as do his own countrymen. Of course Englishmen who do not trouble themselves to watch closely the career of a popular leader of native thought, may be ignorant of his public services and character ; but they have no right to insist that the natives, who have watched every movement in that career for eight years with close attention and with love and admiration, should judge of an isolated act in the same way as they judge of it. Rightly or wrongly they believe that he was unjustly dismissed from the service ; they believe that his conduct since his dimissal has been worthy of admiration and gratitude ; they do not believe that he meant evil, they do believe that he meant good, in attacking Mr. Norris ; and they believe that, if he erred on that occasion, he has been treated with unexampled severity. So far we think they are mainly right, and therefore we do not wonder that they hold meetings to express sympathy with him. But they believe more,—and now we simply state a fact, without expressing any opinion of our own. They believe that the prosecution of Mr. Bonnerjee is but an episode in the war of race that has been going on for months. They look upon it as a blow struck at the cause of the people of India in the person of their most popular leader, and struck from political motives. To believe this may be very wrong and very deplorable ; but the belief is a fact, and it goes far to explain the universal sympathy expressed for Mr. Bonnerjee by all classes of his countrymen. ***Statesman*, 13*th June*,** 1883.

The High Court at Calcutta must itself be exceedingly surprised at the commotion, created throughout the country by its judgment in the Great Contempt Case, and now probably feels regret at the mistake it has so hastily committed. The judgment does not evidently seem to have much improved matters. The remedy has clearly proved worse than the disease. The whole Native Press and the righteous section of the Anglo-Indian Press are condemning in the strongest terms the action of the Calcutta High Court. What is much to be regretted is that the High Court has, by creating popular discontent and dissatisfaction by its recent action, added to the serious embarrassments in which the Government of India is already involved.

In the present case, we regret to have to observe that it is not so much Mr. Justice Norris as the Chief Justice of Bengal who is to blame. Even if it had been determined to punish the libel, of which the Editor of the *Bengalee* was undoubtedly guilty, the learned Chief Justice might, under the exceptional circumstances of the time, have vouchsafed to enlighten the anxious Native community as to the law under which the Court assumed a jurisdiction, unknown to the Codes of Indian law. It might also have been possible for the Chief Justice so to have arranged that the community might have been spared the not very edifying spectacle of seeing the injured Judge issuing a Rule in his own case, and the accused Editor practically deprived of the necessary time for preparing his defence. The fact of it is that Sir

Richard Garth is too good-natured. His friends and his colleagues equally take advantage of his pliable disposition. Even men, who do not admire his deportment as Chief Justice, freely admit that he is a good, genial-hearted English gentleman. But this quality will not and cannot necessarily make him a successful Chief Justice. Working probably on his facile disposition, the Civilian Judges have managed to induce him to allow them, contrary to all precedents, to preside at the Criminal Sessions on the Original Side of the High Court. While these Civilian Judges are not permitted to exercise the Original Civil Jurisdiction of the High Court, we fail to see how they could have been, and can be permitted to exercise its Original Criminal Jurisdiction. If it is said because of the present codification of the criminal laws of the country, then we should ask why in the recent case were the express provisions of the Criminal Procedure Code in contempt cases set aside, and why the High Court based its action, as it is believed, on English law, though it is not quite clear as yet under what law it acted.

Mr. Justice Norris, previous to this contempt case, had, on several occasions, been attacked by the Native Press in connection with his famous speech at the last distribution of prizes at the Oriental Seminary, with his orders on the shoe-question, and with many other subjects, on which the learned Judge seems to have entertained and expressed peculiarly original views. It is not likely that the Native Press has been looked upon by him with an eye of favour. It is not difficult to concur in the general belief that, though a somewhat blunt and plain-spoken man himself, Mr. Justice Norris is, perhaps, rather over-sensitive to public criticism. It may be presumed that he made a grievance of what appeared in the *Bengalee*, and represented it to the Chief Justice and his other brother-Judges; and as they, too, had not much reasons to be pleased with the Native Press, it was probably determined upon to issue a Rule for contempt against the Editor of the *Bengalee*, and to punish him as a warning to other members of the Native Press. The Chief Justice's famous Minute of the Bengal Rent Bill had been rather sharply criticised by that Press generally, with one or more exceptions, notably the *Hindu Patriot*, the organ of the Bengal Zemindars. Again, His Lordship's action in regard to the Branson Resolution, passed by the Native Attorneys of the High Court, was rather freely commented upon in some Native journals, the *Bengalee* being one of them. The proceedings of Messrs. Justices Cunningham and Prinsep in another case, in which these Honourable Judges came into collision with Mr. Jackson, Barrister-at-Law, had been severely animadverted upon by the Native Press. That Press, especially at this moment of the Jurisdiction Bill agitation, is the particular *bete noir* of many Englishmen. Under such circumstances, we can easily understand that the proposal to deal summarily with the *Bengalee* for contempt of Court, met with no objection or opposition from the Chief Justice and his colleagues.

Mr. Norris belongs to the Radical party, and he was sent out to this country by Mr. Gladstone's Government as a Judge of the High Court. We have been told by himself at the Oriental Seminary what Mr. John Bright had advised him to do. But we are afraid that Mr. Branson's example has exercised more influence over his mind than the precepts of Mr. John Bright, as otherwise, it is difficult to understand his strange attitude towards the Native community. When Mr. Norris first arrived in India, his arrival was announced with a flourish of trumpets in the columns of a leading Bombay paper. We thought he would have proved a most valuable accession to the Bench of the Calcutta High Court, though, as he himself now and then says from the Bench with his usual candour, that he is a "cheap" Judge, and people should not expect much from him, meaning of course that he has come out, under the recently reduced scale of salaries for High Court Judges. Then, the *Brahmo Public Opinion* itself, which has of late been now and then inserting sundry paragraphs against him, was, in the early part of his career here, in the habit of recording various things in praise of him, for example, the occasion on which, so far as we remember, Mr. Norris was said to have got out of his carriage, and helped a poor Native who had been hurt by a European driving in a buggy. But Mr. Norris was not content with acting the good Samaritan only; he actually, it was said, ran after the carriage to ascertain the name of the man who had caused the injury, Mr. Norris' occasional eccentricities on the Bench, his order as to wearing Native shoes and slippers, his allusion to the ex-King of Oudh as a "caged beast," (which led, we hear, to a correspondence between the ex-King and the Government of India) and the other matters, related by the *Times of India* and ourselves a few days ago, show that Mr. Justice Norris, with all his abilities and honesty of purpose, is not exactly what we took him to be. At any rate, it is somewhat difficult to understand Mr. Norris' character. That he is a candid and rather too outspoken a man, there cannot be two opinions about. It is evident also that he always says what comes uppermost to his mind, caring neither for the feelings of others, nor even for the dignity of the Bench. We are sure he would have proved a staunch friend of the Natives; but we know too bitterly the effects of Anglo-Indian influence. His great friend, it is no secret, has been Mr. Branson, who has so maligned the Bengalis! Mr. Norris is a man who cannot conceal his thoughts. While making flippant remarks in Court, he forgets that he is sitting on the Bench of the highest tribunal in the land.

It was unfortunate that the Chief Justice should have allowed Mr. Norris to sit as a Judge on the Original Side of the High Court, instead of associating him with another Judge on one of the Division Benches on its Appellate Side. Of the two Courts now sitting on the Original Side, one is presided over by Mr. Pigot, and the other by Mr. Norris. As each Bench on the Original Side is occupied by a single Judge, and much is left to the judgment and discretion of that

Judge, it would be well that the most experienced Barrister-Judges only should be allowed to sit alone on each of the two Benches on the Original Side of the Court. But Mr. Justice Norris, shortly after his arrival in this country, was allowed by the Chief Justice to exercise the Court's Original Jurisdiction. On the Appellate Side, one Judge acts as a wholesome check on the other. We hope that Mr. Justice Norris soon will be transferred to the Appellate Side.

Then, again, the Bar should have occasionally given a hint or two to Mr Justice Norris, so that he might have been restrained from indulging too freely in his judicial eccentricities, which detract so much from the dignity of the Bench. It is always expected that the Bar should act as a wholesome check upon the Bench, and the Bench upon the Bar; and if both do their duties properly, neither can go wrong. Though the High Court is composed of so many Judges, no complaints are generally made against them collectively or individually, and it is surely deserving of enquiry why Mr. Justice Norris alone is constantly singled out to be run down. We believe, Mr. Justice Pigot has been sitting singly on one of the two Benches on the Original Side. Who has heard a word said to his prejudice? Mr. Justice Wilson sat for a considerable time on a Bench on the same side. He always commanded universal respect, and added to the dignity of the Bench; and so did Sir John Budd Phear, Mr. A. G. Macpherson, Mr. W. Markby, Mr. Pontifex, and other Barrister-Judges. Neither the Native Press nor the Native community ever pretended that they had any grievance against any one of them at any time. It is needless to say that we have already had a terrible foretaste of "cheap" Judges; and we trust in Heaven, we shall not be inflicted with them any more. Mr. Norris has been a "cheap" Judge with a vengeance!

As for the Chief Justice, we regret his utterances both in connection with the Branson Resolution, passed by the Native Attorneys, as well as in his judgment in the contempt case. At one time he had been a particular friend of the Natives. It was he who, on his first arrival in this Country, wrote a Memorandum, proposing the establishment of District Appellate Courts in the Mofussil and the association of Native with Civilian Judges on the Benches of those Courts. His relations with the Local and Supreme Governments had been always harmônious, so much so that, on a letter from Lord Ripon, he expressed his readiness to withdraw his objections to the Transfer of Property Bill. But his unfortunate Minute on the Bengal Rent Bill, in which he expressed too warmly his condemnation of its policy, brought him into collision with the Government of India and the Civilian element in particular. His quarrel with Mr. Mackenzie, the Home Secretary, was still more unfortunate, especially for the dignity of the High Court, of which he is the Chief Justice. If Sir Richard Garth had followed the example of Sir Richard Couch and Sir Barnes Peacock, and avoided mixing too freely in society or interfering in matters with which he as Chief Justice should not have been con-

cerned, such as presiding at the meeting in honour of Sir Ashley Eden, &c., he would have been all that could be desired. We regret he ever wrote his Minute on the Bengal Rent Bill; we regret what he said from the Bench on the last occasion in regard to the Branson Resolution, passed by the Native Attorneys (we do not say a word in regard to what passed privately between him and some of them; we regret especially the action he allowed to be taken, and the judgment he passed in the contempt case. If he had kept himself aloof from all these things, Sir Richard Garth would have been one of the most popular Chief Justices that ever came out to Bengal.—*Indian Mirror*, *17th May*, 1883.

To the mind of some persons, as for instance the Editor of the *Indian Daily News*, there is no difference between a feeling and a thought. They confound the springs of the heart out of which gush out emotions and the syllogistic forms which govern a line of arguments. No doubt feelings and arguments should go together and in a perfectly healthy state of things that is the case. But perfect health of the human mind is an impossibility. Facts are facts whether they are based on the syllogism of Goutam or are opposed to them. Facts are whether they are in conformity with the legal maxims of Broom or are opposed to them.

So the question at the head of this article is a question of fact and is not a question of law. There are men who say the production of the *Saligram* in Court could not hurt the feelings of the Hindoos, because the Counsel of the parties under whose possession it was or should have been, had assented to its production in Court. These parties it is argued, had the right of the custody of the God, and if they were not offended at any manner of treatment to which their sacred ward was subjected no body else had the right to be offended at it. It is further pointed out that, there was a Brahmin interpreter who also saw nothing offensive in compelling the appearance of the God in Court. Well, these are good arguments. But can arguments alter facts? Not a thousand texts, said our worthy lawyer of old, could alter a fact.

Englishmen who try to argue away the serious effect of the step that was taken by Justice Norris with regard to the sacred stone will do well to remember what usually happens in the villages in connection with the treatment of the sacred animal. Suppose a bull belonging to a Mahomedan is slain in the house of a Mahomedan for quite an innocent purpose. Nay perhaps for the purpose of religion, itstelf. Suppose this is done in the midst of a Hindu village, what follows—maddened rioting, blood shedding and the like. The reason of this, if you insist on having a reason for such pheaomena of the human heart is simply this. The very sight of one's object of worship or object of religious regard being treated in a way which he feels to be improper is alone sufficient to create a strong feeling of indignation and sorrow. In a matter like this, it would be quite useless to argue that the

persons concerned in the treatment were conscious of no harm and had no bad motives. We say that even in a matter like this, such an argument would be utterly useless. The sight of a bull killed would madden a Hindoo community notwithstanding the killer was the owner, and the killing was done in his own premises, notwithstanding that the killing was legal and there was no bad motive for it.

The *Saligram* or Gopal that was brought into the Court was the the embodiment of a god worshiped not exclusively by the parties to the suit, but by all Vaishnava Hindoos. What right had the parties to subject him to indignity and disrespect? If the parties were unable to worship him, they might make him over to some other votary, and failing that, they might consign him to the sacred waters of the Ganges. What right had they to dishonour a deity worshipped by the community in general? And as for the Brahmin interpreter, there is nothing to show what short of Brahmin he is and to what sect he belongs.

As regards His Lordship Justice Norris, his duty in the matter was plain. If he was asked by the Counsel of any party to order the production of the *Saligram*, he should have asked the Counsel to refer to any law or precedent for such production. Since the commencement of the British rule, there have been thousands of cases regarding sacred idols. But not in a single case was a sacred idol brought before the Supreme Court or the High Court or any Muffusil Court in Bengal.

So this was introducing a new practice. And should it have been done so lightly? Justice Norris is a Christian, and, as such, it is natural for him not to feel any sincere respect for any Hindoo deity. But nevertheless as representative of Her Majesty the Queen, the Sovereign of the Hindoos, his duty it was not to resort to a novel practice without some precedents, at any event, without consulting the Senior Judges of the Court. If the question was about the production of a Roman Catholic idol, we do not know whether His Lordship would have allowed the production of it into the Court relying on matters such as we had in this case.

One would easily see, why, at any event in this particular case, it was the duty of His Lordship to protect the honour of a Hindoo God more than the parties to the cause. For both the plaintiff and the defendant had reasons to be indifferent about the matters. The plaintiff was indifferent, for he expected that the defendant would not produce the true *Saligram* or Gopal whom the plaintiff claimed but a changed and counterfeit one. The defendant also did not care, because the *Saligram* he had produced was really not the genuine *Saligram* wanted but a false one. This the Court found to be the fact. Thus the feelings of these men could not evidently be taken as any index of the real Hindoo feeling on the subject.

Much of late has been said about the Hindoos being loathe to appear in Court as witnesses and about their seeking exemption

from attending Court. Now although the Hindoos have no such exclusive privilege, nevertheless it is true that they feel it a disgrace to be brought into the midst of the crowd one meeting with in a Court. And if they feel it a disgrace as regards themselves, Justice Norris might have well imagined that the production of the idol was something more than a matter to be settled by the nods of two barristers and one or two Hindoos about the Court.—*Amrita Bazar Patrika*, 10*th May*, 1883.

We fondly hoped that now that the spectre, raised by the Anglo-Indians after a persistent agitation of about three months, has got a victim, it will disappear from the land and allow us to live in peace. But Saturday last the *Englishman* again becomes to the charge and writes a furious article. This time the anger of that paper is not directed against Lord Ripon, nor the Bengalees, but the "agitators" who are making "a wicked endeavour" to stir up political capital "over a paltry and contemptible question." These "miserable creatures make a low, sordid, mercenery gain out of a tension of public feeling——social vampires who are dependent for sustenance upon the morbid condition of the body politic."

One would be first disposed to fancy that, the *Englishman* was only describing himself, but no, he was only expressing his moral indignation at the conduct of the Hindoo agitators,——"the social vampires who are dependent for sustenance upon the morbid condition of the body politic." But in March last India was quiet. The "Hindoo social vampires" were deeply engaged in discussing the measure of self-Government of Lord Ripon, Lord Ripon was happy, so was the country, the Anglo-Indians treating the Viceroy with respect and consideration. But suddenly our peaceful and innocent contemporary saw "a thunderbolt" which none else then saw, and began to talk of nothing else till he had been able to persuade all his highly intelligent constituents to see it. It is such conduct as this that, gives the *Englishman* the privilege of ascending a high platform and looking down upon the "sordid, wicked, and mercenery" Hindoo agitators with auger.

When the fall of the thunderbolt was an established fact according to their apprehension, the *Englishman* and its following being all very peaceful, quiet, honourable, and moral men began to abuse the Hindoos; and, belonging to a superior and chivalrous race, they began to slander Hindoo ladies and their religion. This practice was followed day after day to the bewilderment of the Hindoos, who saw with amazement the missiles thrown upon them broad-caste from parties whom they had never offended. This practice was followed with a view to wear out the patience of those who are now characterized as "social vampires." Of course this was all honourable. When a public meeting was held for the purpose of abusing the Hindoos, and the meeting expressed delirious joy at the chivalrous deeds of the speakers, it was all a very English, generous, and honourable act.

But the Hindoos are mean vampires because they were expressing their loyalty to the British crown at the offer of a partial local self-government. These "miserable creatures" bore with patience for several weeks together the grossest of abuses daily heaped upon them. These vampires could have easily convened a meeting to give reply to the speakers at the Town Hall but they remained quiet. In the papers they always assumed a tone of defence, and never used one unkind word against Englishmen in general, their ladies or their religion. It is thus that, the *Englishman* has acquired the right of assuming a high moral ground for the purpose of reading a lecture to the "social vampires."

The *Englishman* is particularly indignant that, an attempt has been made to raise subscription for political agitation! Of course the Anglo-Indian Defence Fund, of which the Editor of the *Englishman* is the Secretary, is not a fund for political agitation.

But this is not all. The *Englishman* deprecates political agitation in the interests of good Government. For we are told that, these agitations "will render English administration in India impossible except at the point of the bayonet." And again: "Even had there been cause for agitation every right thinking native would have hesitated long and profoundly before adopting measures which he must know would be highly prejudical to good Government."

It is the duty of every right thinking *Native*, says the *Englishman*, not to do anything prejudicial to good government. So it is not the duty of every Englishman. He may if he chooses march to Government House. He may incite the officials not to obey their superiors. He may talk of taking up arms, of appointing Vigilance Committees &c., &c. All this the Englishman has the privilege to do; it is only the right thinking *native* who must look after good Government, and never adopt measures prejudicial to it!

The fact is, the *Englishman* does not like that, the Hindoos should feel insult at the outrage offered to their religion. Englishmen have decided amongst themselves that, it is no insult to the Hindoo religion to take their *Thakoor* into the High Court. The question has been thus settled, and why should the Hindoos feel any insult after this authoritative decision? But in matters religious, the human mind is every where whimsical, it is especially so in India. A man who thinks that, his religious feeling has been hurt is not always disposed to hear the counsels of his religious leaders, much less will he care those offered by aliens whom he calls *Mlechas* or barbarians.

Whether the religious feeling has been hurt or not, it is not even always for the Pandits to decide. Sometimes popular feelings assume such proportions that religious leaders find it impossible to resist them. In the matter of the Thakoor case, there is no disagreement between popular feeling and the tenets of the *Shastras*. That an outrage has been committed, every Hindoo will be able to tell you, ignorant or

learned. It will require no incitement from the "professional agitators" to make them feel that a gross outrage has been committed upon the Hindoo religion.

A Thakoor has a special building or room set apart for him. There none can enter who has not purified himself by ablutions. Even the Pundit can not enter the sacred precincts without first purifying himself. A Thakoor is not removable except on certain occasions permitted by the *Shastras.* A Thakoor loses divinity as soon as he is brought in contact with unholy ground. These are words of his *shastras* and are known to all classes of Hindoos.

It has been alleged that Thakoors have been taken to Court on certain occasions before, without that fact having created any excitement. The alleged facts may or may not be true, but they were not made known to the public. The present outrage could have never been made known to the public if there had not been a contempt case in connection with it. It is now a subject of conversation all over the country, and the matter is being hotly discussed everywhere.

Both the *Brahmo Public Opinion* and the *Bengalee* are non-Hindoo papers. They would have never ventured to write so strongly on the subject if they were not sure of their ground. They wrote in the interests of good Government, and one of them has been made to suffer for it. And now the *Englishman* is angry that, the Hindoos should feel any outrage at all. This is rather unreasonable. It is all the work of others rather than the professional agitators; it was the work of the High Court Judges. One of them was the means of committing an outrage, and all the Judges sat together to punish him who commented upon the impolitic act. The educated men are mad after Babu Surendra Nath Banerji, but the orthodox classes are just now thinking of other matters. Feeling in such matters does not assume gigantic proportion at once. But the idea is spreading that if Surendra Babu has suffered he has suffered in the cause of the Hindoo religion. *Amrita Bazar Patrika*, *24th May*, 1883.

It is curious and yet true that out of strange materials the most unexpected ends are worked out by the inscrutible designs of an all-wise providence. But for the confinement of Surendra Nath Banerji, it is probable that this Calcutta *Saligram* case would not have attracted such a large degree of importance, until perhaps in the course of time it had become a hoary precedent in the same direction and had done considerable mischief. The record of the civil case is not yet before us, but the leading facts as stated in the affidavits in the contempt case are enough for the present purpose. Mr. Justice Norris ordered, it is said the *Saligram* to be brought to a certain place with the consert of both the parties to the suit, and a certain Brahmin interpreter or interpreters testified what, in their view, was a proper procedure under the circumstances. So far as the judge's *bona fides* is concerned, we have not a word to say, and it would

be folly ever to urge that because a judge committed a mistake that he was therefore to be supposed to have willfully done so from improper motives. Such has not been and is not our view. But making all allowances, we must say that we disagree with the Bengal High Court in our opinion of the whole matter. With all deference we think this case shows a lamentable want of acquaintance with the religious usages and feelings of the people throughout the country. Doubtless there were two parties to the suit, and they consented to some proceeding, but the Court seems to have forgotten what we may call the third party, we mean the *Saligram*—not the individual *Saligram* in the case, but the deity represented by that symbol, the votaries of which number over at least a hundred millions in the British empire. We do not know the Brahmanism of his Lordship's referees in the Court, or how far these same referees have ever risen above the level of the ordinary officials. But we take leave to say that this is the first occasion which we have seen or heard of during the last thirty or forty years when such an occurrence has taken place. We might have added a longer period, but that would have been going to the books ; and their Lordships have referred to no precedents in the course of their whole proceedings. The bringing of such sacred objects as a *Saligram* from its sanctuary into open Court or even into a coridor or into any other portion of the Court house is so foreign to the Hindoo religious ideas and feelings that that community is shocked by such desecration. We do not wish unnecessarily to hurt the minds of our European readers by any acerbity of expression; but they may conceive for themselves the depth of the feelings hurt, and the necessary indignation caused throughout the land. Some English journals have lately left their moorings; their intellect has been unhinged by recent occurrences in Bengal and they may say what they like. To them we speak not; but to those who have honourably maintained their superior position throughout these tempestuous times, we regret to say in all seriousness that the bringing of a *Saligram* out of its sanctuary is a desecration highly offensive to the Hindoo community, and unless such a proceeding is authoritatively disowned or discouraged, it may be set down as a precedent; and in wrong hands the thing might work and will work incalculable mischief to us all. It is in this view that we question the propriety of the whole and deprecate its ulterior consequences.

We shall now take another view. The worship of such objects as a *Saligram* may, to out-siders, appear a very simple matter, but it is only experts in certain branches of the Hindoo religious law—which has nothing to do with civil judicature—that can properly inspect and distinguish certain *Saligrams* by their characteristic signs. What particular *murti* the disputed *Saligram* was, does not appear either on the judge's statements or on the affidavits, and it is impossible to say how his Lordship was to be guided in the work of identification, and further how the deity was to be restored to its sanctuary with the

prestige, moral and religious which it possessed before removal. It ought also to be remembered that according to the civil and religious customs of the Hindus, a *saligram* cannot form a subject of partition; if there be three or four *saligram panchayatanas*, it is the father's privilege to distribute them amongst his sons, or failing the father, the elder brother may do so; but there is no right of property in them, and if there be only one family *saligram*, it is the undoubted privilege of the eldest member to carry on the worship which cannot be divided. The plea of consent has nothing to do with it. Suppose the parties in the Calcutta case had agreed to divide the *saligram*, would his Lordship have been justified in passing a decree for its division? We apprehend he could not have done so; for such a decision would be against Hindu law and usage. Seeing the whole proceeding and looking at it in all its aspects, we must confess to a feeling of great disappointment. It shows an utter want of knowledge of the social and religious usages of the Hindus of India, and if Mr. Banerji had written on the subject from the above point of view, he could have dealt with Mr. Justice Norris with terrible effect. But as a gentleman, finding he had been misled by another paper, he at once confessed to his mistake and did not raise any side issues, and knowing the gentleman as we do, this was certainly expected of him under any circumstances. Looking however to the dry and almost technical character of the judgment of Chief Justice Garth, we think the best we can say of it is that when a suitable opportunity arises, his Lordship would do well to revise it from a higher stand-point and with the new light which the case is daily receiving.

There is yet another point which is worthy of consideration in this connection. We are not a whit behind other writers in upholding the dignity of our Courts, but the dignity, the usefulness, and the very existence of the public press in this country are no less deserving of the most serious consideration and the earnest support of all parties in India, from the Viceroy in the metropolis down to the village beadle. In a recent case Lord Coleridge is reported to have said that "if the decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy." If such be the case in reference to religion itself, surely the High Courts are merely a human institution; and cannot set themselves higher. The *saligram* controversy was a very fair subject of attack, and even a virulent attack by a public writer in the interests of all concerned—the High Court, the Government and the public; for all alike are concerned in preventing any outrage to the religious feelings of the Hindu community. If in performing a work of this kind, Mr. Banerji did commit a mistake, the interest which he represented was at least equally high with the dignity of the High Court, and after a public apology, such as Mr. Banerji had tendered, we think it was a mistake to send him to jail for such an offence unless a case of grave moral turpitude could be made out against him.—*Native Opinion (Bombay.)* *20th May*, 1883.

The agitation which this case has evoked is we may say unparalleled in the history of Indian agitation. In our own time we have seen many public demonstrations, but we do not remember to have seen one like the present in times past. We well recollect the public meeting at the mansion of Raja Sir Radhakant Bahadur for the recall of Sir Mordaunt Wells. We were ourselves intimately connected with that movement. The feeling then roused was wide-spread. The old and young, the rich and poor, the high and low, the educated and imperfectly educated, the orthodox and the heterodox had all banded themselves together to carry their complaint to the foot of the Throne against the slandering Judge. Then as now the Pundits had lent their co-operation. One of the leading spirits of the movement was no less a personage than the venerable and illustrious Pundit Eswar Chandra Vidyasagara. Even the Christian Missionaries sympathized with it, and Dr. Duff took an active part in settling the memorial. The crowds, which had assembled on the grounds of the Sobha Bazar mansion, could be counted by thousands. Still we must confess the enthusiasm was not then so great as at present. We also well recollect the Town Hall meeting in honour of Lord Canning. The gathering was so large that there was not standing space within the Hall ; the enthusiasm was most intense, and there was an oratorical fight between the admirers and vilifiers of Lord Canning. But it did not approach the sights seen in Beadon Street within the last ten days. The Education Meeting of 1870 was a grand demonstration ; delegates from the remotest parts of the country attended the meeting, and the enthusiasm was overflowing. Still it could not be compared with the demonstrations, which have taken place within the last few days. Of course the times are progressing ; political education is advancing, and the people are becoming more demonstrative than they were before. On the present occasion a moral force has been at work which was absent on previous occasions. It is the students, who have, we may say, vitalized or galvanized the whole community on the subject. They have acted as self-appointed missionaries of the new Gospel. They have held meetings and consultations, have gone from house to house and preached the cause of their preceptor as the cause of the nation, have printed and posted placards themselves, have spoken to the shop-keepers and induced them to close their shops on the day of the meeting, have devoted their pocket money to their sacred cause, and raised money from among others. We admit that it would be a dangerous thing for themselves and for the country, if the students should throw themselves into the whirlpool of politics, and we counselled them the other day not to do so, but it would seem that they are fully alive to the gravity of their position. The foolish pranks played by some of them at the High Court on the day of the trial, and which none can regret more than we do, we take to be one of those outbursts of school-boy nature, which under given circumstances occur in every clime. But their subsequent conduct has been most praiseworthy. At the two meetings held in the Beadon

Street Theatres and attended by from ten to fifteen thousands of persons on each day, there was no act of disorder, no row, no display of rowdyism. Business was conducted with the utmost order and decency. On not one occasion did the students open their lips—they justly and wisely left it to their seniors the more serious part of the business. But it is not in the capital only the students have been centres of action. In the Moffussil also they have been the prime movers—their enthusiasm has proved a blessed contagion, and it has spread like a wild fire. Of course the electric current flowing in Calcutta has been transmitted to the Moffusil—but it cannot be denied that the whole country has been stirred to its inmost depth. It is true that the national mind was being prepared for a demonstration of this kind. The very announcement of Lord Ripon's Self-Government scheme had thrown the nation into a state of excitement. The tacit opposition offered by old and unsympathetic Civilians to the noble policy of the Viceroy had not a little aggravated this excitement. Then came the move for a prayer to the Queen for the prolongation of the term of Lord Ripon's Viceroyality. All this was pleasant work, but we mention it to shew that there was political activity among the people. And now came the unfortunate Jurisdiction Bill—we call it unfortunate, because it has been the cause of fierce antagonism of race through the length and breadth of the country. Of course our countrymen denounce the silly opposition, which has been offered to the Bill by the Independent Britons residing in India, but they at the same time warmly admire the power of organization, the uncompromising demonstrativeness, and the wonderful cohesiveness with which the Europeans have bolstered up such a bad cause. This grand example of political agitation has made a deep impression upon them, and the lesson thus taught has not been lost upon them. They have reproduced faithfully the example set by the European community. If our countrymen in the Moffusil and in the sister provinces and presidencies are holding meetings and inundating Calcutta with messages and telegrams, and are also raising subscriptions, they are simply treading in the footsteps, the circumstances being different, of the agitators against Mr. Ilbert's Bill. There seem to be some Europeans, who stand aghast at this spectacle, who think that it bodes no good for the future. But they ought to remember that if any evil should flow from this strain upon the popular mind, it is the Independent Britons, who are responsible for it. It is they who have set the example. It is they who have ignited the flame of agitation against Mr. Ilbert's Bill from one end of the country to the other. And in carrying on this agitation they have scrupled at nothing. They have not scrupled to abuse the Government, aye the Viceroy himself, and to vilify the people, who whatever their faults, have at any rate the merit of producing that national wealth, which feeds them and enriches them. Happily our countrymen have not copied the prototype slavishly. They have certainly given expression to their feelings, but they have neither abused nor contemned authority.

One remarkable feature of the present movement is that it is not confined to the Bengalis. Our enemies are but too ready to taunt us with the remark that the hardy races of the North and West have no sympathy for the weak Bengalee, but the demonstrations made in the North-Western Provinces, the Punjab, Oudh, Bombay, and Madras shew that there is a common feeling among all classes of the Native population throughout the country. In Calcutta the Hindusthanis, Marwaris, Sikhs, and even Mahomedans and Native Christians have made common cause with the Bengalees in a matter, which owes its origin to a religious question affecting the Hindus. And it is time that there should be this union among the different nationalities of India. They should join hand in hand in a common bond of attachment and loyalty to that beneficent Sovereign, whose enlightened and benign rule has enabled them to achieve this happy union and also in a common prayer for justice to their varied claims. Loyalty to the Throne and Justice to the People ought to be the battle-cry of every champion of his country's cause. If we remain faithful to that cry, our enemies, however spiteful or powerful, can do us no harm.

We only regret that while the national feeling has been roused to its inmost depth, the agitation is perhaps destined to prove unfructuous. Surendra Nath is in jail and no amount of wailing or sympathy will avail to bring him out unless the High Court chooses to remit the sentence. But he does not care—what was meant as humiliation and degradation for him has proved to him the most glorious triumph. In a criminal case, we are told, no appeal lies from the High Court to the Privy Council except with the leave of the Court. The question of jurisdiction is of vital importance to the cause of the liberty of the subject and of the press, but when that question was avoided by the Counsel of the accused it is doubted whether the Viceroy and the Secretary of State would like to pose themselves against the High Court and refer the question to the Privy Council. Perhaps the best course would be to watch the progress of the Contempt of Court Bill in the House of Lords, and if it should pass into law, then to apply for its extension to India, even in a modified form if necessary. Possibly it was from these considerations many common sense men, not liable to be carried away by mere feeling, had advised less hasty action. But whether successful or no, the country is roused and it ought to speak out. Out of the fulness of the heart the mouth speaketh. The present agitation, though it may not result in immediate or direct gain, will undoubtedly result in immense indirect gain. It will shew that the people of India are not an inert mass that they are not dead to those national feelings, which distinguish every civilized nation on the face of the globe, that they no longer appeal to arm but appeal to the sober and impartial judgment of their rulers for the vindication of their wrongs, that they have learnt the arts of lawful and constitutional agitation, and are determined to wage the bloodless war of legitimate reform.—*Hindoo Patriot*, 21*st May*, 1883.

Those who have carefully and attentively watched the movements that have been going on in our midst since Babu Surendra Nath Banerji's imprisonment would do well to seriously ponder over them and assiduously lay to heart the valuable lessons that are taught by the study of important and unmistakeable signs of the times. It cannot, we believe, be any more denied that the young Bengali patriot's incarceration is a remarkable event in the political history of the people; and, while it is confidently hoped that those to whom are entrusted the affairs of the millions of Her Majesty's Indian subjects will take due note of it, the people themselves will take a fresh start from the standpoint to which they have been brought. We have, since the memorable 5th May, talked the matter over with the oldest that live amongst us, —such whose memory carries them back to the days of Lord William Bentinck; and, we have been assured by them that the agitation which has followed Babu Surendra Nath Banerji's imprisonment has been quite unprecedented. At first, people thought that the agitation was confined to those who, to use an Anglo-Indian contemporary's humorous language, "can successfully plead minority in a Civil Court." But, every hour, the agitation began to swell, till it resembled a wild fire, and spread all over the length and breadth of the vast peninsula, among all shades of creeds and castes, and compassed men of different ages and of different positions in society. It is no exaggeration to say that there is scarcely any remarkable town in all India that has not echoed the sound of sorrow, sympathy and indignation; and, we are strictly within the limits of truth when we say that there is scarcely an educated community in India that has not contributed its mite to swell the universal chorus, nay, the masses, proverbially inert and indifferent as to the outside world, have spoken and made signs. There are marks of sorrow and joy, despair and hope, determination and earnestness on every intelligent face; the native Calcutta is all bustle and talk and action, and we are sure all other cities are not otherwise.

The illustrious prisoner is literally overflooded with letters and telegrams, expressing sympathy, conveying condolence and offers of pecuniary help. Nay, our ladies have not been slow in signifying their heartfelt sympathy with the wife of the illustrious husband in her hours of grief and sorrow. The Presidency Jail has already, during the fortnight, received visitors, the like of which so far as their position, character and respectability are concerned, was never seen before. The rich and the poor, the young and the old, the high and the low, all of one mind, of one voice.

What is all this owing to? This is a question which every educated Indian should put to himself, which every community should discuss among themselves, which Indian legislators and administrators should seriously busy themselves with, and lastly, which should occupy almost the exclusive attention of the illustrious inmate of the Presidency Jail. The *Hindoo Patriot*, which is looked upon by the majority of foreigners as the leading native paper, but, which is slowly, though no less distinctly, loosing its title to that honoured leadership, says that

"it is the severity of the punishment and the important issues involved which are the secret of such universal sympathy or Surendra Nath".

We cannot agree in this view; and, if indeed our worthy contemporary means to be sincere in this expression of opinion, we can not help discerning in it the surest indication of what we are tempted to describe as intellectual perversion and dim-sightedness. The astute journalist and politician should have discerned in it a stern reality, something more tangible and durable than what owes its origin to temporary enthusiasm. We for ourselves make bold to assure the reader that this agitation bears on its front the ineffecable marks of progress, of advancement, of growth of what may be fairly looked upon as political feeling in our midst. It is merely idle gossip to say that a few raw unfledged school-boys share this feeling; and, as soon as this fact is realised in its integrity, we approach a rational reply to the momentous question. The unjust and illegal punishment with which the judges of the High Court have thought fit to visit the Editor of the *Bengali* has only served to bring to the forefront and to the bewildered gaze of unaccustomed eyes, the materials which have been preparing for the last few years, under the auspices of a movement of which the Editor of the *Bengali* has been the life and soul. Whether it is in connection with the removal of hinderances in the way of the natives of India getting admission in the Covenanted Civil Service, or for the purpose of doing away with a mischievous piece of legislation gagging the Vernacular Press, or with the object of ushering into existence representative institutions for the management of local, municipal, provincial and imperial affairs in this country, the exertions of Babu Surendra Nath Banerji have always been in the direction of getting up a strong, watchful and intelligent public opinion, competent either to successfully cope with interested and influential opposition to the advancement of Indian interests or to substantially and powerfully lend strength to those who have taken it into their head to promote those interests. The week Bengali, the stalwart Hindusthani, the money-making Marwari, the sturdy Sikh, the civilised Parsee, each could perceive in the labours of the political missonary broad and distinct marks of catholicity, and of a desire to serve the common interests of all, and thus was, perhaps unconsciously and in spite of himself, being taught the valuable political lesson which he sought to impress on his mind in various ways. The partial success which was believed to have already attended Babu Surendra Nath Banerji's labours served to bring the comparatively unthinking and indifferent round his cause; and it was destined, that he should "suffer" before the results of his earnest labours and single-minded zeal would be exposed, in brilliant colours, to public view. The constitutional agitation, which must owe its origin to a sense of wrong, now goes on in our moist, without the person who has persistently laboured, in the midst of difficulties and persuasions to the contrary, to impress its supreme importance on the minds of his fellow-countrymen. The significance of the agitation does not lie so much in the

number of persons taking part in it, but in the unmistakable desire of giving proof of their appreciation of the labours of the prisoner in the Presidency Jail, and in their anxious solicitude for letting the world understand that his incarceration has not tended to lower him in their estimation. The feeling which has hitherto been silently growing has burst itself, in order that he whose exertions have created that feeling, may not be given occasion for despair and regret on the score of want of appreciation.

The silent sufferer in the jail is unquestionably the most active person at the present hour. This may seem paradoxical at first sight; but, depend upon it, we write deliberately. The solemn awfulness of the sufferer's present situation is calculated to materially help him in this active life. For, while Babu Surendra Nath's countrymen are in a state of ferment, can it be that he himself is inactive? No. His hours are busy with momentous considerations. People who "start at the sound of their own," and who do not see anything but danger to British *raj*, say what they like; but, we verily believe that the illustrious prisoner, than whom none has better understood the situation, is, truly speaking, not missing; but, on the other hand, seriously absorbed as to the programme he would follow when set free.—*Indian Empire*, 20*th May*, 1883.

"How are the mighty fallen in the midst of the battle!" exclaimed King David, lamenting over the valiant Jonathan. "How are the the mighty fallen in the midst of the battle!" seems now to be the voice of all India, mourning the disgrace of the talented and patriotic Babu Surendra Nath Banerji. The spontaneous outbursts of grief, passion, admiration and gratitude, which have, well nigh, convulsed the nation constitute a phenomenon which, though perhaps unprecedented and unique, is nevertheless quite explicable. An ancient and venerable nation, teeming with its millions of people and having a vivid memory of its glorious old days had been passing, as through a dark and dismal wilderness for centuries. The many noble and heroic qualities which once characterised it, and which liberty of thought and action alone can foster, were, during this dreadfully prolonged epoch, all but extinguished. In the fulness of time, however, under the liberal and benign administration of one of the most civilised nations on the earth, it pleased Providence to raise up a few patriots who brought back the nation to a sense of its own degraded state. The nation opened its eyes and saw. It saw that the cup of its sufferings was truly brimful, and it adored and followed those pioneers with joy. We do not hesitate to say that Babu Surendra Nath stands foremost in this sacred band of patriots. Verily he appeared on the then gloomy political horizon of the land, even as a delightful vision "glittering like the morning star, full of life, and splendour, and joy." The angel of the Lord touched his lips with the hallowed fire, and Surendra Nath went from one extremity of the land to the other, proclaiming, as with a shrill trumpet note, in the midst of the rejoicings of the nation, the glad tidings of its approaching regeneration. Since then, tremendous

is the labour which he has undertaken. He has manured the soil with his own heart's blood, and the country has, in this short space of time, produced quite a cheering and amazing harvests.

We therefore do not at all wonder at these unparalleled demonstration, for, unless we are greatly mistaken, they are the spontaneous outpourings of the grief and gratitude of a highly emotional race, and not, as some of the wise oracles of the English press will have it, a spurious agitation got up by a lying and hypocritical people tò foment sedition.

We have hitherto referred to the claims of Surendra Nath on the gratitude of the nation, and explained, as well as we could, the problem which to many of our superficial Anglo-Indian contemporaries appeared quite a hoax. We now proceed to show how richly he deserves at the hands of the Government as well. We all vividly remember the dark days of the Mutiny,—that dreadful tragedy, enacted in the midst of a profusion of blood and fire, unknown and uprecedented in the annals of of the land. The race animosities had then reached their highest pitch. The flames of the mutiny were, however, wholly extinguished by the bravery of the English and by the still more commendable bravery and loyalty of Her Majesty's Indian subjects. Not so the race feeling. The nation was touched to the quick, and since then, notwithstanding the gracious proclamation of our beloved Sovereign, a dormant feeling of discontent had been pervading the bulk of the community. The nation felt, as if it was being tyrannized over, and this feeling was given expression to in numerous poems and pamphlets, breathing sedition, and indulging in the absurd and chemerical dreams of driving the English out of the land. But suddenly a change came over the nation. And who brought about that wholesome change ? We affirm again that we extenuate nothing when we say that it was mainly Babu Surendra Nath, who, as if by a magic wand, turned the tide. Standing on the platform of the metropolitan Town Hall, the great patriot-orator has, many a time, vindicated the rights of the English nation to our best loyalty and gratitude, and preached in the midst of the admiration of multitudes glowing with enthusiasm, and charmed with his eloquence, that the British nation was the Heaven-appointed Trustee of the Indian Empire, that moral force was always more potent than brute force, that the English were a nation distinguished by a spirit of liberty and philanthropy, and that constitutional agitation was the only means which could pave the way of India's regeneration. Loyalty in fact forms his backbone. His passionate and wild invocations, of 'Mother Victoria' still rings in our ears. He is, we may say the great champion of constitutional agitation in India. And what is the result of all this ? The result is that the whole nation has been animated by a spirit of profound loyalty to Her Majesty the Empress. Such are the services that Surendra Nath has rendered to the Government, and need we say, that he is entitled to its best considerations ?

But by a strange irony of fate, such a man is now confined in a prison cell, and is being stigmatised by some of our contemporaries as "scurrilous and lying." This indeed a fitting recompense for such

glorious services! Surely times are out of joint. We have nothing to say to these "unblushing calumniators" of our race. But we congratulate the nation on the deep sympathy that it has shown to its Tribune, and fervently hope that it will still continue to appreciate and adore its patriots.

What a person, this Surendra Nath! The spectacle of a man,—himself a victim of the injustice of the Government, striving, to the best of his abilities, to plant the seeds of loyalty deep into the bosom of the nation, surely such a spectacle is edifying and wonderful in the extreme. And what his reward? We almost blush to say, a dark prison cell. Let then—

"Pity like a naked new born babe
Stroding the blast, or Heavens cherubim horsed,
Upon the sightless couriers of the air,
*Blow the * * deed to every eye,
That tears shall drown the wind."

For verily he is a man whose "virtue plead like angels trumpet-tongued."—*The East*, 26*th May*, 1883.

We believe very few thinking men will now be disposed to deny that the sentence of imprisonment inflicted on the Editor of the *Bengali* was a mistake on the part of the Bench, and has defeated the object of the punishment We apprehend the feeling which actuated the Hon'ble Judges in making their sentence so severe was not to soothe the outraged feelings of Mr. Justice Norris or to be revenged upon the defendant for his disrespectful language to the Court. It was to vindicate the dignity of the Court, to uphold a great principle and to teach a wholesome lesson to careless journalists that Mr. Surendra Nath Banerji was sent to jail. The result has completely belied the expectation of the Judges. The Defendant so far from being crushed by his sentence is positively benefitted by it. Its severity takes off from the public eye the nature of the offence committed by him. He has been transformed into a hero, a martyr to the cause of his country's religion and a champion for the freedom of speech suffering for his public spirit and devotion to the public good. The pulse of all India beats in intense sympathy with him for his misfortune. Meetings are being held in all parts of India in which all races and creeds take enthusiastic part and resolutions are being carried condoling with the defendant, and regretting the action of the High Court. Poona and the Bombay Presidency have taken the lead and the North-Western Provinces and the Punjab are following their example. If Mr. Surendra Nath Banerji were not the tried publicist he is, if his mind were not so well educated and well regulated, he might well lose his head over the ovation he is receiving and come to think that the violent language he used towards Mr. Justice Norris was not the reprehensible thing it is said to be. Was this the lesson his sentence was intended to teach?

Our people are generally so partial to the High Courts that we are always disposed to regret any *contretemps* which tends to diminish

our confidence in the Judges and lessen our good opinion of them. The High Courts are institutions which Natives of India regard as their only safe-guards against the high-handedness of the mofussil Executive and which distribute impartial albeit costly justice. Any thing which would shake the trust which the people reposed in them and alienate the good feelings of the former is to be deplored as a public calamity. It is in this sense that we deeply regret the indiscretion of the Hon'ble Judges in inflicting the sentence. Their action has not even rehabilitated Mr. Justice Norris' reputation as a cool-headed and sound Judge, much less proved that he was right in ordering the idol to be brought into Court. All the affidavits notwithstanding the public decline to be convinced that there was any necessity for that method of testing the age of the idol. They unanimously question its propriety. Mr. Justice Norris may have been misled by his advisers and by his own English ideas on the subject, but his step was a false one and has not been remedied by Mr. Banerji being sent to prison. Mr. Justice Norris may be a clever lawyer and an estimable person, but somehow or other he has managed to make himself highly unpopular within the short time he has been in this country. The people of Bengal may be to blame for not being able to appreciate him, but clearly there must be some thing more than mere perverseness on their part that has brought about the friction between them and him. A Bombay contemporary, by no means pro-Native in his tendencies, at least at this moment, enumerated the other day a number of the learned Judge's sayings and doings which go far to explain why he is not appreciated. We know of no High Court Judge who has ever been successful in making himself thoroughly hateful to those to whom his mission was to dispense justice. He is notoriously wanting in tact and temper. The High Court naturally suffers from the appointment of such Judges. They come between the people and the only trbunal they love and respect, set both by the ears, and change their mutual relation from one of friendliness and confidence to one of distrust and antagonism. We observe with pleasure the unity of feeling which has been evoked on this question. We hope that this sentiment, which has been silently growing for a long time and which has received a powerful impetus from the highly injudicious and indecorous attitude of the Anglo-Indian community and their organs on the Native Jurisdiction Bill, will cement a lasting union between the various Indian peoples, and teach a lesson to their enemies. We would beg our friends, however, to refrain from sending memorials to the Queen and the Viceroy on the sentence inflicted on Mr. Banerji, as they are scarcely likely to bear practical fruit, but to concentrate their attention and devote their energies and resources in moving the Privy Council to settle the question of the High Courts' Jurisdiction in contempt cases. The result of such an appeal may not be of immediate benefit to the Editor of the *Bengali*, but will do infinite good to his brother journalists and the public at large. We should like to know, whether the High Courts can be held ever

to have had the jurisdiction exercised in this instance, and if they had, whether such jurisdiction is still retained in the face of the recent legislation in India. If it be decided that the High Courts still possess this power, then all ranks must join in moving the legislature to take them away at once and for ever. No one should ever be allowed to possess such irresponsible and autocratic authority. The mædival prerogatives of the English Superior Courts are not fit to be conferred on Indian Courts in these enlightened times. Besides in England, in dealing with the sturdy English people, in the fierce light of English public opinion and under the eyes of the supreme authority of Parliament, the case is entirely different. The fact that the Court of Queen's Bench exercises such powers is no ground why the Indian High Courts should do the same. Reason and common sense are alike opposed to it. As recent events show, even Judges of High Courts cannot be trusted to exercise such dangerous and uncontrolled authority with discretion. The sooner they are relieved of them the better for all concerned.

Our English contemporaries though making merry over Surendra Nath's mishap, have kept a discreet silence as to the legality of the High Court's proceedings. We should be glad to hear what can be said in support of them, so that the ground may be cleared for future action. We rely on our Calcutta brethern to take effective steps without loss of time. We hope our own Province which is already evincing a warm interest in the matter will not fail to render them the aid of their moral, and if need be, their material support. The question has become one of national importance and should be settled by national co-operation.—***Indian Tribune (Lahore)*, 19*th May*,** 1883.

Verily, we are living in critical times. The news from Calcutta regarding the fate of Surendra Nath Banerji has fallen on us like a thunder-bolt. He has been sentenced to two months' simple imprisonment for a paragraph which appeared in his paper, the ***Bengali***, and which was construed by the High Court into contempt of Court. The Native Judge thought a fine was enough for the Babu's offence, but the four European Judges were of different opinion, and they have inflicted an examplary punishment on a native gentleman who stands in the highest estimation of his countrymen, who is a Municipal Commissioner, and whose disinterested service to the public the Bengal Government recently recognised by appointing him as an Honourary Magistrate of the town. The paragraph that has brought on this result is as follows :—

* * * * * * * * *

Mr. Justice Norris in issuing the rule against the Editor and Proprietor of the ***Bengali*** observed :—" The account here given of what took place in Court on the date in question, is absolutely and entirely incorrect ; not only incorrect, but untrue—untrue in letter and untrue in spirit." We greatly regret that our esteemed contemporary should have committed himself to an expression of strong feelings without ascertaining the exact circumstances of the case.

But much as we regret the indiscretion of the Editor, we cannot but regret still more that the Honourable Judges deemed the offence so heinous as to deserve a severer punishment than the one recommended by their native colleague. On individual and on political grounds the course that has been adopted will be regretted by the native community throughout the country. The *Bengali* was never a rabid paper; its general policy has been always one of fairness and moderation, characterised by patriotism and ability. Babu Surendra Nath Banerji is a native gentleman of superior education; he went to England and passed the Covenanted Civil Service examination, entered the Civil Service of Bengal; but while he was yet an Assistant Collector he lost his appointment for a crime of which, it is said somebody else was guilty during the regime of that intolerant officer, Sir George Campbell. But his dismissal from the public service was fortunate for the country; and though he regretted that Government should have acted unjustly towards him, he was never sorry that he was not in the public service. Since that time he has cherished only one ambition as the crown of his life, that of serving his country to the utmost of of his ability and means. Though, as we have already remarked, he had the high regard of both the people and Government, his connection with the *Bengali* and his public spirit has evoked feelings not every friendly from many of the Bengal Anglo-Indians. It is not our intention here to review the public life of Babu Surendra Nath Banerji; we wish simply to observe that, specially in this country, the path of a patriot is not one of roses. We regret very much this sad interruption in the useful and patriotic career of this our *Bengali* countryman. But on political grounds we regret still more the disproportionately heavy punishment that the European Judges of the Calcutta High Court have thought it fit to meet an offence of contempt of Court. We do not indeed mean to condone or palliate any offence that may be calculated to lower in popular estimation the dignity of administrators of justice or any other public officers. Considering however the extremely straitened relation that subsists between the Anglo-Indian and native communities at Calcutta and the general excited tone of public feeling in that city, we regret the severity of the punishment inflicted on the offender. Our readers need not be told what attitude the *Englishman*, the leading newspaper of Calcutta, has assumed towards the natives of the country subsequent to the publication of the unfortunate jurisdiction Bill. This paper noticed in its own columns the paragraph in question and suggested that the *Bengalee* has committed a gross contempt of Court. Immediately Mr. Justice Norris the Judge concerned in the paragraph issued the rule that we have referred to. Mr. Justice Norris himself has been very unpopular with the native community since his arrival in this country. A few days after his arrival, while presiding at a public meeting he made a sweeping assertion against the moral character of the Hindu nation, which wounded very naturally the feelings of the people. Subsequently he issued an order that no native should appear in his

Court with native shoes. On one or two other occasions too he behaved himself in a manner which did not commend itself to the approbation of the native community. It was even said that his attitude towards the native attorneys, Vakils and Barristers was in marked contrast to that which characterised his dealings with the European section of the bar. His wife is a prominent member of the Ladies' Committee that was appointed to memorialise against the jurisdiction Bill. In connection with all these circumstances, the ***Bengali*** as a patriotic and outspoken journal has criticised Mr. Justice Norris in strong terms. Again, Sir Richard Garth, the Chief Justice, has had recently some reasons to be displeased with the native community. Sir Richard Garth criticised in a strongly-worded minute the provisions of the Rent Bill and the ***Bengali*** as the organ advocating the interests of the ryots criticised his minute in a series of spirited articles. Recently there arose an occasion for misunderstanding between the Chief Justice and the native attorneys who had combined together against Barrister Mr. Branson whose name has been made obnoxious to the native population throughout the country. His Lordship entered into a private negotiation with the native attorneys and persuaded them to withdraw their resolution on the ground that "it is unprofessional, if not illegal." The native attorneys did not show any disposition to yield to the pressure and showed that they valued the honour of their nation more than they valued their professional interests. Meanwhile a paragraph appeared in *the Hindoo Patriot* referring to the negotiation that was proceeding. The appearance of the paragraph ruffled the feelings of the Chief Justice, who, assembling the members of the bar together, and, it is said, with almost tears in his eyes, observed pathetically " Mr. Advocate General, there is such a thing as good faith in the world, and I hope it has not dissappeared from this country or from this Court. But I confess I have been sorely disappointed in this matter. I can only say that it has taught me a lesson, and I hope it has taught you one also." This pathetic speech of the Chief Justice shows how bitter his feelings then were against the natives in general and the Attorneys in particular. We have discussed so far to shew how unfortunate it is that this sad affair should have particularly come up at a time when the mutual feelings of the two races were of such unpleasant description. We have said that the native Judge was in favour of imposing a fine as a sufficient punishment for the offence in question, but the other four European Judges thought that no less a punishment than imprisonment would meet the justice of the case. Now, it is well known that the Judges of the Calcutta High Court were strongly opposed to the Bill and the wives of some of them have taken the most prominent part in the ladies' anti-movement. Unfortunately, in the Province of Bengal almost every thing has been done to embitter to the last point of toleration the mutual feelings of the two races and it is therefore unfortunate that at such a time any thing should happen which might prejudice the judgment of the people regarding

the motives of the powers-that-be. The offence of the *Bengali* is light when compared with the rabid and seditious utterances of a certain section of the Anglo-Indian Press. The proceedings of Mr. Justice Norris which formed the subject of comment by the *Bengali* were such as were calculated to rouse the feelings of the native public, if the facts were such as were represented by that newspaper. After all the *Bengali* was not responsible for the facts which he quoted from another native paper. It is to be regretted, as we have already observed, that our contemporary should have proceeded on inaccurate information. But that was his only fault. And this together with the apology which the Editor tendered to the Court should have, in our opinion, entitled his case to a lenient consideration. If the majority of the Judges had concurred in the opinion of their native colleague, they would have acted in a manner highly worthy of their position and dignity, and at the same time justice would have been meted out to the full extent that either the preventive or retributive character of the punishment demanded.

One word more and we will be done with this unpleasant task. The speedy and heavy retribution that has overtaken an offence of indiscreet haste on the part of such an honourable man as the Editor of the *Bengali* fills us with alarm as to the real measure of the liberty that is vouchsafed to the press in India. Our Penal Laws, (thanks to Sir James Stephen) are such that if the authorities are so disposed they can evolve a libel, defamation, or contempt of Court, out of every line of adverse comment that may appear in the columns of a newspaper against any public measure. There is in this country much of liberty and liberalism on paper and on lips, but in reality, as the Lords' debate and the case we have just reviewed must show, very little of them is enjoyed by the people. We are a free nation merely by sufferance.—*The Hindu* (*Madras*), *10th May*, 1883.

Do education and position in society go to mitigate the penalty of crime or enhance it? Both the views have been often held. In the case of the *Bengali* Sir Richard Garth held that they went to aggravate the crime, that is, if the Editor of the *Bengali* had been a less educated man, had been a man whom his countrymen honoured and admired less, he should have received less severe punishment. We venture to think that this argument is fallacious. The ends of justice are not served by increasing the penalty in proportion to the education and position of the accused. At any rate it has not done so in the case of the *Bengali*. The reason why such a severe punishment was inflicted on Babu Surendra Nath Banerji was that the dignity of the Court had to be vindicated and that an effective warning might be provided for others who might be tempted to commit a similar crime. Now we humbly think that neither of these two has been secured by sending Surendra Babu to jail. In the first place the dignity of the Court has not been vindicated. The public do not believe that the Judges were right in the course that they adopted. They think, rightly or wrongly, that the Judges were swayed by race-feeling, and

while fourteen years ago when an English man libelled a native High Court Judge the offender was let off with an apology, the native that commented severely on the proceedings of an European Judge in the present case has been sentenced to imprisonment. Nor does the native press seem to be cowed down by the punishment of a co-labourer. The native press of Calcutta breathe a defiant though suppressed tone of indignation and have criticised the proceedings of the High Court strongly. Indeed nothing less can be expected in a free country appreciating the force of constitutional agitation. Public opinion and freedom of the press are not to be terrified into silence or servility by high-handed proceedings even on the part of High Court Judges. The High Court far from having raised themselves in the estimation of the people have considerably lowered themselves and have afforded room for a change in the belief of the people that the High Court is palladium of justice and liberty. Nor is Babu Surendra Nath Banerji likely to look upon his present misfortune with feelings of regret. He is no doubt sorry for the error he committed in having commented strongly on the proceedings of a Judge on incorrect information. But he had fully acquitted himself before his conscience when he made the only preparation possible, on unreserved apology. He now thinks himself an injured man, a victim of race feeling, and a martyr to patriotism. The great mass of his countrymen think so too. The whole country has been stirred, Surendra Babu has become a greater patriot than ever, has endeared himself to his countrymen beyond value, he is the hero of the hour. Still greater ovation probably awaits him on his return from jail. Now all this could have been saved, it was in the power of the Judges to have saved it. Far different would have been the consequence if the majority of the Judges had taken the suggestion of their native colleague and inflicted a fine after accepting the apology or rested satisfied with the apology. To have committed an error, to have been hauled up before the Court, and to have tendered an unreserved apology, must be a sufficient humiliation to one of Babu Surendra Nath's culture and social position. The Court would have produced an impression of dignified generosity, and the native community would have applauded the High Court while regretting the mistake of the accused. The feeling of popular disapprobation would have been directed towards the right course instead of the Court in a highly intensified and indignant form.

To the people of this Presidency it will be interesting to know something of the strange sayings and doings that have within such a short time rendered the name of Mr. Justice Norris of Calcutta known throughout India. The following are some of them, which we take from Calcutta papers, and which to our best knowledge and belief have not been contradicted: 1. Before he had been three months a Judge, Mr. Norris distinguished himelf in open Court, by characterising the ex-King of Oudh as a "caged creature," and by making some other unpleasant observations regarding the royal pensioner. 2. Mr. Norris attracted attention by his

somewhat novel treatment of an unfortunate suitor who entered his presence chewing betelnut. 3. Again there was the very recent case of the Native who asked to be excused from attendance at the Sessions. Being unable to explain in English why he wished to be excused, Mr. Norris directed the poor man to wait in Court for the day "during which the learned Judge had no doubt the Juror would obtain a sufficient knowledge of the English language to plead his own cause." 4. He ordered a Hindustani witness to uncover his head in Court on the ground that his cap formed no part of his national dress. 5. He issued an order interdicting people entering his Court with native shoes on, which rule formed also a subject of conversation in the House of Commons. 6. He taunted a Bengali witness with an allusion to his national pluck. 7. He taunted an Honourary Magistrate from the mofussil with the remark. "Are these the men that are going to be vested with power to hang us"? probably with reference to the proposed Bill. 8. He once advised a prisoner to administer cod-liver oil to his friends whenever he found them wasting away. 9. A prisoner's counsel having challenged four white jurors, was told by Mr. Justice Norris that if any other challenges of white jurors were made he would postpone the case to the next sessions. The fifth man called up by the clerks of the Crown, being a native, was told by his Lordship to stand back till four white jurors were elected unchallenged in the place of the four challenged. 10. In the famous *Thakoor* case, in connection with which the *Bengali* made its remarks, Mr. Justice Norris is reported to have said "The dignity of the Court and every thing else put together is of very small moment, considering the importance that a Hindu should have an opportunity of worshipping the stone." 11. The Calcutta papers also mention a current report that Mr. Justice Norris was present in the Calcutta Town Hall when orator Branson declaimed against the character of natives, and his Lordship waved his hat in sympathetic response to his eloquence. 12. To make up a round number we may add, that Mr. Justice Norris belongs to the radical party of politicians in England and was entreated by Mr. Bright who he says is his friend, to do good to the people of India. For the same reason we omit to mention his sweeping remark on a public occasion that the Hindu nation was a nation of liars.—*Hindu (Madras), 20th May*, 1883.

At a time when the relations of the Native and the European population are so strained it is deeply to be regretted that incidents should arise which are calculated to make the breach wider and intensify those race antipathies which have unhappily sprung up between the rulers and the ruled.

The issuing of the Rule calling upon one of the most popular Bengal Editors and the deplorable result of that Rule, are incidents which would be unfortunate at any time, but at this time, when every thoughtful Native or European ought to be most careful not to aggravate bad feelings already so strongly excited, the harm that these incidents are capable of doing is simply incalculable.

It is scarcely fair to say that the paragraph which appeared in the *Bengali* was likely to bring the Calcutta High Court into contempt. It was certainly calculated to bring Mr. Justice Norris into contempt, and who shall say that Mr. Justice Norris's conduct during the short time he has been on the Bench is such as is not deserving blame? It appears to us that the honour of a seat on the Bench has come to Mr. Justice Norris much-too-soon. With ripening age he might have learnt to exercise greater caution and greater patience on the Bench. We believe the learned Judge has never breathed the serene and sobering atmosphere of Westminster Hall. He was, we understand, practising in a very modest way at Bristol when he was suddenly honoured with a Judgeship because he had been a good political partisan and had rendered some service to his party. Ever since he has been on the Bench he has excited unfavourable comments by his conduct. We have nothing to do with what a Judge does in private life, but the public has every thing to do with what a Judge does on the Bench. Mr. Norris's vagaries and extravagances have been the subject of severe comment. His ungentlemanly reference to the ex-king of Oude, his treatment of a man who came into the Box with betel-nut in his mouth, and his unjustifiable action towards a juror who did not understand English, are incidents calculated to lower any Judge in the estimation of the public. If then a man chooses to be guilty of certain vagaries, if he chooses to excite public notice by conduct which would be characterised by any thing but judicial calmness, we maintain that if occasionally his conduct is inadvertently misrepresented and his action misunderstood, he has no body to blame but himself.

Let us now, for a moment, turn to see how Mr. Surendra Nath Banerji was treated by the Full Bench of the Calcutta High Court. We have no hesitation, in the first place, in saying that to charge a man with a serious offence and then give him one clear day to defend himself in, is a great hardship. He had barely time to get an affidavit hurriedly prepared. He had not time to make inquiries and to calmly think over the line of defence he should adopt. Then, we certainly are of opinion that the question raised in the affidavit as to whether the Court had jurisdiction to try Mr. Banerji summarily was one which, to say the least, is arguable.

When we read the report by Telegram an impression grew on our mind, and that impression is confirmed when we see the full reports. If we are doing an injustice to a deserving man, we are sorry, but we cannot get rid of the impression that Mr. W. C. Banerji who represented the accused, performed his duties in a somewhat half-hearted manner.

The sentence of the Court was not only severe—it was intended to be exemplary and to have a deterrent effect. How far it will have that effect remains to be seen. We are fully convinced of one thing and that is that if the Judges had simply accepted Mr. Banerji's apologies and discharged him after a warning, it would have gone a long way

towards raising the dignity of the Court. The Judges would have asserted the power they had without exciting the hatred of the people which they have now done. The impression on the public mind is that the infliction of punishment is merely the result of the rancour which has sprung up between Europeans and Natives with reference to the Jurisdiction Bill. The case of Taylor who reviled the Native Judge of the High Court, and who for eight days after conviction refused to apologise and thus added to his offence by contumely, and who was afterwards released on making a half-hearted apology, stands in glaring contrast to this case. Mr. Justice Mitter's dignified protest does him honour.

In conclusion all we can say is that Mr. Banerji has lost little but gained much in popularity, while the Court, we say it with regret in trying to assert its dignity, has succeeded in completely losing it, and has earned the odium of the people of Bengal.—*Indian Spectator, (Bombay)*, 13*th May*, 1883.

We are extremely sorry to see that race feeling is on the increase in Calcutta. The Editor of the *Bengali*—Mr. Surendra Nath Banerji —has been imprisoned for two months in the Civil side of the Presidency Jail in Calcutta for having inserted an article in his paper, reflecting on the character of Mr. Norris as a Judge. Four European Judges of the High Court have passed the sentence and Mr. Justice Mitter has differed from them. Following as this case does—as also the sentence—Sir Richard Garth's remarks on the conduct of the native attorneys of Calcutta, it is difficult to induce ourselves to believe that the punishment inflicted upon Mr. Surendra Nath has nothing to do with race feelings. Mr. Branson vilified the natives of India in terms as offensive as they were scandalous ; to this day the *Englishman* has gone on writing against the Government of India in language of the most unworthy and disloyal character ; and yet when Mr. Branson apologised, the saintly writers in the Anglo-Indian Press, who now dance with joy at the news of Mr. Surendra Nath's punishment because he is a native, were the first and indeed the loudest in advising our countrymen to accept the apology and pardon the defamer of our nation ; and no one has had the courage to take action against the *Englishman* for its cowardly attacks against the Government of India. The cases cited by Mr. Justice Mitter applied with peculiar force to the present case and should have, reasonably speaking, induced his European colleagues to deal with it in the manner in which those cases were dealt with. In one of them the offender's apology—which was not tendered until after sentence passed—was accepted when given and the man was released. Sir Richard Garth has not been able to say more on the cases cited by Mr. Justice Mitter than to make the very general remark that they do not apply—why and wherefore, Heaven and the Calcutta Chief Justice alone must know ! The *Bombay Gazette* has been graceful enough to say that the sentence passed by the European Judges has nothing to do with

race feelings. It is to be hoped it has not. But the time when the sentence has been passed, the summary manner in which the precedents cited by Mr. Justice Mitter have been ignored, and the somewhat vague remark made by the Chief Justice only a few days before this case that the conduct of the native Attorneys had taught him "a lesson"—all these seem to us to militate against the *Gazette's* view of the affair and we cannot but express our regret at the painful extremes to which feeling has been reduced in Calcutta. The *Times of India* very correctly says that Mr. Justice Norris has himself to blame to some extent for the false paragraph which appeared against him in the *Bengali*. That might be no excuse for the offence of the writer of the paragraph in question but it was a circumstance which ought not to have been lost sight of at the present moment. We admit that the paragraph against Mr. Norris was of a personal character but then, even allowing that it is too much to expect Judges to be thickskinned, it should be remembered that public writers have to comment upon judicial vagaries, and if one of them is found to have for the first time strayed a little too wide of the mark and expresses regret for it, there is no reason why he should be drawn and quartered. Verily, they have a case made out for them against the Jurisdiction Bill ! We tremble for the fate of our countrymen,—*Indu Prokas, (Bombay), 7th May,* 1883.

THREE QUESTIONS IN RE-CONTEMPT OF COURT CASE.

TO THE EDITOR.

Sir,—We live in stirring times now-a-days. Things occur one after the other with such rapidity that I find it difficult to comprehend the full import of the one before the other comes and overshadows it. And my mind gets a little confused over the various questions that suggest themselves and remain unsolved. Before this "Contempt of Court" case, as it is called, passes into the background, would you, Mr. Editor, throw a little light upon the following questions that since Saturday last have puzzled me and others that I daily meet:—

1.—Which is the bigger swell in India—the Viceroy or a Judge of the High Court, say Justice Norris? I ask this question because I find that *Englishmen* may utter and publish any amount of contempt of the Viceroy, but they must not utter a whisper against a Justice of the High Court without running the risk of two months in jail. The *Englishman* may vilify the Viceroy to his heart's content, and Englishmen will praise him. A native vilifies a Puisne Judge, and he is sent to jail for two months. I always thought that the *Viceroy* in India is in the fullest sense, the Queen-Empress's representative, so that the honour and respect due to her, every loyal subject in India gives to him. Yet I find that an English editor of an English newspaper, the organ of many of the loudest against Mr. Ilbert's Bill, writes thus of the Viceroy:—"What are we to think of such a man for Viceroy—*man*, Heaven forgive us the slip—this human formation without a single attribute of manhood to distinguish him from, let us say, an ox or an—hem, any other member of the lower creation,"—and the writer offers no apology for such language. Nay, an Englishman is paid by Englishmen for writing thus of the Queen's representative, and a native is sent to jail for two months for uttering some hasty words against a Judge of the High Court for which he apologises. Only fancy such language as the above being used against a High Court Judge. No, Mr. Editor, don't fancy anything of the kind, or if you do, I shall not be responsible for the consequences. I am somewhat bewildered, but I am comforted by the reflection that it is sometimes safer to express contempt for his mightiness the Commissioner of Police than for the most insignificant *parawalla* that struts the streets; for the biggest bull-dog, than for the smallest cur.

2. The next question that has troubled me is this:—Which is the better Judge—the Chief Justice or Justice Mitter? Hitherto I always thought that the better judge was he who most clearly showed

that his judgment always corresponded with some known law or some well established precedent. The judges Babu Bannerji referred to were, I understood, bad judges because they could not and cared not to show that their judgments corresponded with any known law or precedent. God forbid that I should ever say, or even in my most unguarded moments imagine, that our High Court Judges are not all of them good—but though all good, one may be better. Which is the better—the English Chief Justice or the Bengali Puisne Judge? In the case of Surenra Nath Banerji, no Judge made any attempt to show that their judgment was in accord with any known law. Or if any of them did, your printer must have dropt the reference. I read of no chapter or section of either the Civil or Criminal Code, or any other law or code of laws. When my native friends therefore crow over me and say the Bengali Judge, at any rate, appealed to precedents and the English Judges did not, and therefore he is a better Judge than any of them, I do not know what to answer. Kindly tell me, Mr. Editor, what answer to give. I feel disgraced that in this invidious contrast I cannot defend my highly honoured countrymen. Give me words, reasons, facts to silence the Bengalis.

3. My third and last question is this:—Are the ends of justice secured better by putting the better men in jail—or by putting the worse men? Hitherto I always thought our jails were made for our worse men, and that every effort would be made, consistent with justice, to prevent our better men getting into jail. Now by all accounts, Babu Surendra Nath Banerji is one of the very best men in Calcutta,—a man whom both the people and the Government delighted to honour—a man who heartily and ungrudgingly served both the Government and the people—a man whom the Government selected only very lately to honour above his fellows,—a man whom the people in large crowds proposed for still higher honours,—a most public-spirited man who never spared himself when the public interests seemed to demand that he should exert himself,—a man whose praise is in the mouth of all his countrymen,—one of the most honoured and respected of the teachers of youth in Calcutta, who frequently taught them on the authority of the greatest of Englishmen that "Earthly power doth then show likest God's when mercy seasons justice," and that "in the course of justice none of us should see salvation,"—a man who as a true patriot stands second to none amongst his countrymen,—a defender of the oppressed, of the poor and the down-trodden among the tens of millions of the dumb illiterate ryots of Bengal,—a man who, in one word, is by common and universal consent *the tribune* of the people. Such a man, in an evil hour, came, it is said, within the clutches of the law. He is brought before the Judges of the country—four Christian Judges and one non-Christian. He cries for mercy. He apologises for the words which he had unadvisedly and rashly uttered. "We do pray for mercy," says Shakespeare, "and that same prayer doth teach us all to render the debt of mercy." The non-Christian Judge answers "Yes: Christ taught aright, and

mercy he shall have." The Christian Judges answer: "No, he shall have unseasoned justice." If I understand the Chief Justice rightly, I understand him to say in his judgment that the fact of Mr. Banerji being such "a gentleman," occupying such "a position" and being possessed of such "attainments" was one reason of the justice being given so very *unseasoned*. The better man he was, the greater must be his punishment. If he had not been such a man he might have got off like Mr. Taylor with one day instead of two months.' The compliment is rather dearly forced upon the poor man. Hitherto I thought that the putting of such men into jail, instead of serving the ends of justice, completely frustrated them. Such men make the jail respectable, they take the sting out of it, and make men indifferent to its degradation. The thousands of young men who look back with pride to the fact that they sat at Surendra Nath's feet in the class room will not feel greatly dishonoured by lying for days and nights in his prison cell. I am sorry, greatly grieved, for what has happened, and almost ashamed to have to subscribe myself.

AN ENGLISHNAN.

SYED AHMED KHAN AND THE CONTEMPT CASE.

TO THE EDITOR OF THE PIONEER.

Sir, your correspondents—Observers I and II—seem to me very strange people. What can they see strange in the expression by native gentlemen of sympathy for Babu Surendra Nath? I think any impartial and dispassionate man must sympathise with him. I am sure I do, and most heartily. The best men, native and European, will of course admit that he was very wrong to use the language he did in regard to Mr. Norris, and had he been only rebuked publicly by the Court, or fined a moderate amount, few would have denied that, if the Court had a right to deal summarily with contempts not committed in Court nor having reference to a pending case (which seems doubtful), the penalty inflicted had been deserved. But to send an educated man to jail for an offence of this nature in defiance of previous precedents—for an offence, moreover, which had been apologized for, and which had arisen out of the misstatements of others—appears to most men, not blinded by race prejudice, an extremely harsh and severe measure, the victim of which becomes necessarily an object of sympathy.

Moreover, a good many persons think that had the offender been an Englishman he would not have been imprisoned, not because they suppose the Court to have shared the local anti native

feeling (though the common people of course believe this to be the fact), but simply because he would have known better how to word his apology, so as to avoid any appearance of giving further offence. That a man should be extra severely punished, simply because in expressing himself in a foreign language in a great hurry (and I, for one, think that more time ought to have been allowed to him to prepare his apology), he did not say exactly the right thing in the right word is, to my mind, a further ground for sympathizing with him.

ALLAN HUME.

THE CONTEMPT OF COURT CASE.

PUNA NATIVE OPINION.

[FROM A NATIVE CORRESPONDENT OF THE "TIMES OF INDIA"]

Puna, 8*th May*.

The thirteenth anniversary of the Puna Eloquence Society commenced on the 3rd instant in the Anandodbhava Theatre. Yesterday, the 5th May, 1883, an unusual number of persons was present. Great sensation was caused by the telegram published in the Bombay dailies, relating to the fact that Babu Surendra Nath Banerji, Editor of the *Bengali*, had been sentenced to two months' imprisonment for contempt of one of the Justices of the High Court of Calcutta. Among those present were Rao Bahadur Mahadeo Gobind Ranade, M.A., LL.B.; Professor Ramkishna Gopal Bhandarkar, M.A.; Gopal Gunesh Agarkar, M.A., Editor of the *Kesari*; Bal Gangadhar Tilaka, B.A., LL.B., Editor of the *Maratha*; the Editors of the *Shivaji*, the *Dnyan Prakash*, and the *Dnyan Chakshu*; Mr. Vishnu Moreshwar Mahajani, M.A., the Head Master of the Umraoti High School; Mr. Tatya Saheb Raste; Mr. Baba Gokhale; Mr. Mahadeo Balal Namjosi; almost all the pleaders of the Puna Courts; all the graduates and students of the Deccan and Engineering Colleges; and most of the Mamlutdars, Native Editors, Subordinate Judges, Head Masters of High Schools, Pleaders, &c., of the Bombay Presidency.

Before the proceeding of the Sabha commenced, the Secretary of the Sabha begged the permission of those present to let Mr. Namjosi speak a few words. Mr. Namjosi then rose and said:—Gentlemen,— Do you know what a sad misfortune has fallen on one of our Bengali brothers? For a trifling mistake of which he is an innocent victim, the whole Bench of the Calcutta High Court (with only one exception)

sentenced the poor man to two months' imprisonment ! Babu Surendra Nath Banerji is a graduate of the Calcutta University; he successfully passed the Civil Service Examination, and had been for some time past a member of Her Majesty's Covenanted Civil Service. For a slight mistake, he was dismissed from the service ; and from that time he has given himself up wholly to the public. He is now an Honourary Magistrate, the Principal of a Hindu college, a Municipal Commissioner, and the Editor of the *Bengali*. Properly speaking, he has committed no fault at all. And if he has any, when once he has tendered his apology and confessed that he was misled by the extract published in the *Brahmo Public Opinion*, in good faith, they ought to have accepted it. But as the Judges in this singular instance were too severe on Babu Surendra Nath, it is our duty to express our sincere and heartfelt sorrow in a telegram to that gentleman, and make a petition to His Excellency the Viceroy, humbly soliciting him to remit the sentence. I, therefore, propose that a telegram be sent expressing our deep sorrow to Babu Surendra Nath Banerji in the Presidency Jail, and that a meeting be called to send a petition to Government.

Mr. Baba Gokhale then rose and said :—I thoroughly concur in what Mr. Namjosi said. Mr. Namjosi told us just now that the majority of the Judges decided to punish Babu Surendra Nath very severely ; but there being a Native Judge on the Bench at this time, he expressed his opinion "that it is quite true that the Babu is guilty, and he himself has confessed this. Now that he has done so, we have instances wherein such men are altogether pardoned. For giving him a severe imprisonment I see no reason, for in one of the instances I speak of, Mr. Taylor, the Editor of the *Englishman*, did not tender his apology, but some four or six days after he got his sentence ! I, therefore, hope that my learned friends will show some leniency towards this gentleman." But as he was the only man who said so, he was overruled ! So I second what Mr. Namjosi said just now that a telegram be sent, and a meeting convened to send a petition to Government for the release of Babu Surendra Nath. (Cheers.)

After this Mr. Agarkar, the Editor of the *Kesari*, rose and said :—Gentlemen,—In getting up and having my say is what I owe to you and to my good fellow-brother, Babu Surendra Nath Banerji. He is an Editor, and I am an editior, and hence I must fully sympathise with him; for you all know I have also experienced the displeasure of a High Court, and was obliged to suffer a punishment of which you know whether I am guilty or not. (Cheers.) As for myself, I am fully aware that Babu Surendra Nath is not at fault at all. We, Editors, when we begin to write first upon or concerning any man, are very cautious, and never go a line without a proof of what we write. Now if the same person comes before us a hundred times, and if once perchance we receive some false information concerning him, we naturally never inquire very much after it, but easily believe

that what we hear must be true. This was the case with Babu Surendra Nath. For when he first heard a complaint against Justice Norris, he was very cautious in writing about him. But when Justice Norris came before him for four or five times, he was easily led by the *Brahmo Public Opinion* into a mistake. And as the Babu has devoted himself so much to the public, the Calcutta Judges ought in good faith to have released him. But there is a mystry. Would you believe me? Justice Norris is a European, and Babu Surendra Nath is a Native. Therefore the result of the Babu's mistake must be a severe warning to the public. Now I will place three distinct problems before you. If the Justices against whom a libel is spread had been a Native Judge, the result would most probably have been different from this. Had the culprit been a European and the Judge a Native, the result would still have been different. If all the Judges had been Natives, the result would have been far more different. In support of the above, I must tell you more fully what I know about Mr. Taylor's case. Mr. Taylor was the Editor of the *Englishman*, and he wrote some libellous matter against Dwarka Nath Mitter, the Native Justice of that time. He was, of course, served with a summons, and brought before the Court. He was found guilty. But all the European Judges requested Justice Mitter that he would graciously pardon Mr. Taylor if he would tender his apology. But Mr. Taylor would not tender his apology. The Judges then granted him leave of eight days to consider fully on the points, and if within that term he didn't accept a compromise, he must go to jail. On the sixth or seventh day after this, Mr. Taylor sent his apology to Justice Dwarka Nath Mitter; and he was released! But we must do our best for our beloved and dear countryman. I therefore request you that this telegram (he read the telegram) be sent to Babu SurendraNath Banerji, and a petition be made to Government for the immediate release of the Babu. (Loud and long cheers).

A MEETING OF THE STUDENTS' ASSOCIATION.

A large meeting of students was held at the City College on Saturday, the 5th May, 1883, to express their sympathy with Babu Surendra Nath Banerji. More than 3,000 students were present. It was unanimously resolved that all should wear a piece of black ribbon on their breasts during the time Babu Surendra Nath would remain in prison, as a mark of sympathy.

A MEETING OF THE STUDENTS OF THE FREE CHURCH INSTITUTION.

At a meeting of the students of the Free Church Institution, held on Thursdy, the 10th May, 1883 at 3-30 P. M. The following resolu tions were proposed and unanimously adopted :—

1. That the students in this meeting assembled are deeply grieved to hear that under an order of the High Court, their much-esteemed and highly-valued Professor, Babu Surendra Nath Banerji, has been committed to the Civil Jail for the space of two months.

2. That leaving the legal and political aspects of the said order to be dealt with by those more competent in that behalf, they feel it a duty to record their firm belief that in making the remarks which have been declared a "contempt of Court," Babu Surendra Nath Banerji was influenced by an honest desire to protect those national interests of which he has so long been the faithful representative.

3. That they further take this opportunity to express their heartfelt sympathy for Babu Surendra Nath Banerji in his present situation, and their earnest hope that he may have the consolation of accepting it as a trial incident to the noble career which he has chosen for himself, even that of unreserved devotion to the service of his country.

4. That a copy of these resolutions be forwarded to Babu Surendra Nath Banerji.

The Chairman dissolved the meeting by calling upon the students to give three cheers for Babu Surendra Nath Banerji.

MONSTER MEETINGS OF THE NATIVE COMMUNITY IN BEADON STREET, CALCUTTA.

Three simultaneous monster meetings of the native community were held yesterday, the 11th May, 1883, in Beadon Street, at the National Theatre, the Star Theatre, and the Bengal Theatre. All these large halls were full to overflowing. Natives of all classes, creeds, and races assembled. There were to be seen Mahomedans, Rajputs, Pathans, Sikhs, &c., as well as Bengalis, Hindu Pundits, Mahomedan Moulvis, and religious teachers of various sects were seen on the different platforms and in the body of the audience. The immense gathering, which filled the three Theatres and overflowed into the streets, cannot be estimated at less than twenty thousand.

At the Star Theatre, which was the largest of the three, Pundit Denonath Vidyaratna presided. Pundit Kally Prosunno Vidyaratna in moving the first resolution, spoke in Bengali, and said that a gross infringement of the religious rites and privileges of the Hindus had been committed through the advice of a Hindu Interpreter by a Judge of the High Court. It has always been one of the first principles of the British Government not to interfere with religion. For the sake of religion, all India was willing to stake their lives. In this case an idol, which was worshipped with all their hearts, had been polluted.

Pundit Raj Kumar Nayaratna also commented freely on the procedure adopted by Mr. Justice Norris with regard to the idol. He quoted largely from the *Sashtras*, and seemed to carry the whole assembly with him as he proceeded with his address.

The enthusiasm which prevailed is almost indescribable. But the proceedings were tempered with moderation, while the audience gave repeated and unmistakable proof of the earnestness and depth of the feelings which had been roused. Babu Heramba Chunder Moitra moved the second Resolution in a somewhat lengthy speech. While Babu Heramba Chunder Moitra was addressing the meeting at the Star Theatre, Mr. Lalmohun Ghose was observed near the entrance of the Hall. His appearance was the signal for loud and prolonged cheering, in the midst of which Mr. Ghose walked up to the platform, and took his seat. As soon as the speaker, who was then addressing the meeting, had finished, there were loud and continued calls for a speech from Mr. Lalmohun Ghose. One of the promoters of the meeting explained that Mr. Ghose would prefer to remain silent on the occasion. But the audience continued their calls for Mr. Ghose with redoubled enthusiasm until he was obliged to rise in response to them. Mr. Ghose's rising was greeted with long-continued applause, the vast audience standing up and waving their handkerchiefs. Mr. Ghose had to wait three or four minutes until the cheering had subsided. Quiet being at last restored, Mr. Ghose briefly explained why he did not think it necessary to make a speech on the occasion. He referred to the imprisonment of Babu Surendra Nath Banerji, and said the whole country mourned the event as a great national calamity. (Loud cheers). He could not call to mind any other occasion when there was such intense excitement. He announced that he was about to carry the national appeal to England, and was confident of victory (Prolonged applause and several voices crying "Wish you success," "God-speed," "God bless you, &c.") Mr. Ghose said it was only natural they should wish him success, and feel as warmly on the subject as they did, for the cause he was going to represent was the national cause. (Cheers). He thought it was not desirable to have public speeches until it was finally decided whether the High Court really possessed the vague and undefined powers now claimed by it. He concluded by thanking the audience for their kindly feelings towards himself, and assured them that such expressions of confidence on their part could not fail to strengthen him in the task he was about to undertake. (Continued applause).

The remaining resolutions having been duly moved, seconded, and carried, the vast assembly broke up amidst great enthusiasm. The proceedings at the other two Theatres were of a similar character and in spite of the immense numbers that had gathered on the occasion, perfect order prevailed, and the Deputy Commissioner of Police exercised a very wise discretion in leaving the conduct of the meeting in the hands of the Native community who took care not to abuse the confidence reposed in them.

The Resolutions adopted at the meeting were the following:—

I. That this meeting is firmly of opinion that the production of a Hindu God in the High Court even with the consent of the parties and in spite of the opinion of the Brahmin Interpreter in favour of such production, has outraged the religious feelings of the entire Hindu community.

II. That in the opinion of this meeting the attitude which Mr. Justice Norris is believed to have assumed towards the people of the country and the offensive observations reported to have been publicly made by him regarding them on various occasions are seriously calculated to shake the respect and the confidence which the country ought to have in a Judge of the High Court, and this meeting, therefore, is of opinion that steps should be taken to draw up a Memorial to Her Majesty the Empress of India, on the subject.

III. That this meeting views with alarm the assumption by the High Court of undefined and indefinite powers to punish persons for alleged contempt committed outside the Court Premises, and this meeting is of opinion that the assumption of the functions of both Prosecutor, Judge, and Jury beyond the extent laid down in the Code of Criminal Procedure, is contrary to all sound principles of jurisprudence and is calculated seriously to affect the liberty of the Press and the freedom of speech.

IV. That this meeting wishes to record its deep sympathy with Babu Surendra Nath Banerji in the sentence of imprisonment which has been passed on him by a majority of the Judges of the High Court, and to express its warm sense of appreciation of his labours in the cause of the political advancement of the country.

ANOTHER MEETING OF THE STUDENTS' ASSOCIATION.

A numerously attended meeting of the Students' Association was held yesterday, the 12th May, 1883, at 45, Baneatola Lane, Calcutta, Mr. A. M. Bose presiding. The yard and all the halls were crowded to suffocation, and not a nook was left unoccupied. Even the roofs were filled up. For want of accomodation the large assembly consisting of upwards of 2,000 people had to stand and squat on the ground. And it is remarkable that order was preserved throughout the meeting. The proceedings were conducted with great moderation. Mr. Lalmohun Ghose made a short but appropriate speech. Before the meeting was dissolved, many of the audience expressed their intention to see Mr. Lalmohun Ghose off at the Railway Station when he would leave for England.

The following resolutions were enthusiastically adopted :—

1. That a letter expressing the heartfelt and respectful condolence of this meeting be sent to Mrs. S. N. Banerji.

2. That the best thanks of this meeting be conveyed to the Editors of the *Statesman* and the *Indian Mirror*, for their just and unflinching advocacy of the rights of this country.

Many gentlemen have been authorised to act as agents for the Association, in raising funds. Each of them has a certificate signed by the undersigned. The public are warned to see that the person to whom they make over their contributions, is a certified agent. Contributions will be acknowledged in the *Mirror* and other papers.

PUBLIC MEETING OF THE HINDUSTANI COMMUNITY AT BARA BAZAR, CALCUTTA.

The bankers and mercantile community of Bara Bazar held a large public meeting on Monday, the 4th May, 1883, in connection with the present agitation, when Babu Kunjbehari Lal, a merchant and banker of Allahabad, and a well known local contractor and merchant, was asked to preside. The meeting was held at Babu Lokenath Mullick's, No. 90, Cross Street, at 6-30 P.M. Upwards of two thousand were present.

The vast assembly sat on the floor in oriental style, anxiously awaiting the commencement of the proceedings. At about 7 o'clock, on the motion of Babu Kedernath Khetry, Babu Kunjbehari Lal Khetry was voted to the chair. In a few words he drew the attention of the meeting to the momentous questions at issue, and exhorted all to co-operate in coming to some decision.

Babu Hunuman Persad Khetry moved the first resolution,—That the production of a tutelar deity in the High Court in a recent trial had aggrieved the entire Hindustani community, and hurt their religious feelings. Pundit Devi Sahaya, a member of the Marwaree community, and secretary of the "Dhurm Sabha," in seconding the above resolution, produced unmistakable testimonies from the *Shashtras* that the removal alluded to was calculated to depreciate the holiness of the deity.

Pundit Sadanund Misra moved the second resolution—That if it be a fact that the High Court had authority to call for the production of a tutelar deity within its precincts, an authority that would be exercised against the sacred practices of the Hindoo religion, that in such case a humble and earnest prayer might be sent to her Most Gracious Majesty the Queen-Empress to revoke such authority.

Babu Gobind Narayan Misra seconded the above resolution, and spoke feelingly on the subject alluding also to the trial and severe sentence

of the Editor of the *Bengali*. The whole meeting seemed to respond to his call for sympathy with Babu Surendra Nath Banerji.

Babu Muttylall Johury, a member of the Jain community, moved the third resolution,—That as a meeting had been convened by the Indian Association for an identical purpose, a copy of these resolutions be forwarded to them, with a request to present a suitable memorial to Her Majesty on behalf of the whole community.

Babu Sreekrishna Khetry seconded the above and bade all to be confident of success, and concluded by saying that wherever there was religion, there was success. He alluded to the wrong notion that some English papers seemed to entertain that the complaint about the removal of the deity was not universal, but merely got up by a few agitators. This assembly was the best refutation to such an assumption.

Babu Durga Persad Misra followed, and spoke on the desecration that had been unhappily committed. He condemned the conduct of Gourikant Burman who had thoughtlessly given his consent to the removal of the idol, and he asked whether such a man deserved to be still ranked among his caste people.

The president having briefly spoken, a vote of thanks to the chair was proposed by Babu Bullabh Dass Khetry, and unanimously accorded.

The meeting broke up at 8-30 P.M. as quietly as it had begun.

MONSTER NATIVE MEETINGS.

Yesterday, the 15th May, 1883, there were two monster native meetings again held in Beadon-square at the Star Theatre and the open site adjoining the Bengal Theatre. The original idea of holding the meeting at the Town Hall having been abandoned at late hour, there was scarcely sufficient time for the circulation of the notice that Beadon-square had been selected instead. However there were from eight to ten thousand people present, and some estimates are very much higher. The crowd divided to preserve better order and facilitate accommodation. At one meeting the chair was occupied by Kumar Indur Chunder Sing of Paikparha, who was received with enthusiasm as he passed up to the assembly and took his seat by request. At the Star Theatre the chair was occupied by Babu Ram Kissen Das. Among those present on the occasion were Kumar Nil Kristo Dev, Bahadur, Kumar Benoy Kisto Dev, Bahadur, Raja Surendra Kisto Bahadoor, Kumar Bisweswar Malia, Rev. Dr. K. M. Banerjee, LL D., Dr. Mahendro Lal Sirkar, M. D., Rev. J. Robertson, M. A., Rev. K. S. Macdonald, M. A., T. Palit, Esq., barrister-at-law, A. M. Bose, Esq., barrister-at-law, N. Ghose Esq., barrister-at-law, N. Haldar, Esq., barrister-at-law, P. L. Roy, Esq., barrister-at-law, R. Mookerjee, Esq. barrister-at-law, G. Sen, Esq., barrister-at-law, Dr. P. M. Gupta, Dr.

Gooru Dass Banerji, D.L., Dr. M. Bose, M.D., Mr. O. C. Dutt, Babus Jaggo Nath Khanna, Ram Kissen Dass (merchant, Bara Bazar,) Norendro Nath Sen, Editor, *Indian Mirror*, Annoda Churn Kastogiree, Dookari Ghose, Bhoirab Chandra Banerji, B.L., pleader, High Court, Bama Churn Banerji, B. L., pleader, High Court, Sharoda Churn Mitter, M. A., B. L., pleader, High Court, Kally Churn Banerji, M. A., B. L., pleader, High Court, Nimye Chand Bose, attorney-at-law, Prio Nath Ghose, attorney-at-law, Kanti Churn Mookerjee, Anath Nath Dey, Nobo Kumar Seal, Shib Chunder Dey, Pundit Shib Nath Shastri, M. A., Pundit Raj Kumar Nayaratna, Pundit Bijoy Kristo Goswamy, Nobo Gopal Mitter and others.

Delegates from the following places came to attend the meeting,—Lahore, Burdwan, Krishnagore, Saidpore, Santipore, Gorifa, Chinsurah, and from several associations.

At both meetings it was notified that telegrams had been received from over two hundred people in various stations in India, according their sympathy and tendering their help. The telegrams are from the following stations :—Simla, Lahore, Hyderabad (Deccan), Allahabad, Bombay, Madras, Poona, Shillong, Bankspore, Rungpore, Dacca, Moonshigung, Bhagulpore, Shirajgung, Balasore, Saidpore, Hooghly, Dinagepore, and other places.

The resolutions at both meetings were the same, and as follow :—

First Resolution.—That inasmuch as the question of the summary jurisdiction of the High Court in cases of contempt committed out of its view was not argued or considered in the recent proceedings against Babu Surendra Nath Banerji, this meeting resolve that a committee be formed to take all necessary and proper steps to procure an authoritative decision on the point, and to collect and receive subscriptions for the purpose.

Second Resolution.—That the following gentlemen do form the committee with power to add to their number :—Kumar Indur Chunder Sing, Rev. K. M. Banerjee, LL. D., Babus Mahendra Lal Sircar, M. D., Jodoolall, Mullick, A. M. Bose, Mahesh Chunder Chowdry, Dwarkanath Gangooly, Norendronath Sen, Boirub Chunder Banerjee, and Kally Sunker Sookul, M. A.

One of the most noticeable feature at the meeting was the particularly orderly behaviour which was maintained throughout the proceeding. The reporters of the *Englishman*, *Indian Daily News*, *Statesman* and *Indian Mirror* were cheered as they appeared. The Revs. Jas. Robertson and Macdonald were the only European visitors present, and were heartily welcomed.

All the shops in Old China Bazar and Radha Bazar, and almost all those in Bara Bazar, College Street, and Cornwallis Street were closed at 4 P. M. Large numbers arrived during the day both by the East Indian and E. B. Railways.

A MAHA PUNCHAYET, OR A MEETING OF THE ORYIAS OF CALCUTTA.

On Wednesday, the 23rd May, 1883, at 9 P.M., there was a scene of great excitement in Oryiapara of Kumbuliatolah, where more than two thousand Oryias of Calcutta gathered together, to hold a public meeting to take steps to submit a memorial to his Excellency the Viceroy, expressing their grievance in connection with the recent action on the part of a Judge of the High Court who had ordered a Hindu idol, *saligram*, to be brought into Court without the sanction of the *pandas* who are well versed in the *shastras*, and to express their sympathy with Babu Surendra Nath Banerji in his present distress.

Sri Hari Punda presided on the occasion. Makham Sirdar opened the proceedings, intimating to the multitude in a short speech what transpired about the god *saligram* and Babu Surendra Nath Banerji. Annanda Sirdar proposed—"That this meeting begs to forward a petition to the Viceroy, as the religious feeling of the Hindu community is wounded on account of the proceedings adopted by the Hon'ble High Court.

Then Peela Sirdar proposed—"That this meeting records its deep sympathy for Babu Surendra Nath Banerji in his present condition."

The proposals were passed by acclamation.

It has further been resolved that money should be raised among themselves, to be forwarded to Babu Norendra Nath Sen for carrying the appeal before her Majesty's Privy Council.

The meeting terminated with a national *jattra* late in the night.

MEETING AT SYLHET.

On Saturday, the 12th May, 1883, a meeting of the residents of Sylhet took place to express sympathy with Babu Surendra Nath in his present distress. There was an attendance of zemindars, pleaders, municipal commisioners, medical practitioners, tradesmen, Government officers, and a strong muster of school-boys. The number amounted to about 400. The following resolutions were passed. The speeches delivered were very temperate. Surendra Babu spent two good years of his life at Sylhet in the public service, and has still many friends and admirers among the residents of Sylhet.

First Resolution.—That this meeting, without entering into the merits of the case which has brought Babu Surendra Nath Banerji, Editor of the *Bengalee*, into his present difficulties, desires to express its deep sympathy with him in his distress, in consideration of the many public services which he has rendered to his country.

Second Resolution.—That a committee, with powers to add to their number, be formed to help Babu Surendra Nath Banerji, and to take such other steps in the matter as it may think proper.

Third Resolution.—That a copy of the proceedings be forwarded to Babu Surendra Nath Banerji by the Secretary to the committee, under the signature of the chairman of the meeting.

PUBLIC MEETING AT UMRITSUR.

A Crowded meeting of the delegates of public bodies and educated Native gentlemen was held here on Saturday, the 12th May, 1883, to express sympathy with Babu Surendra Nath Banerji, the able and distinguished Editor of the *Bengalee*, and a sense of the severity of the sentence passed on him by the Calcutta High Court.

The chair was taken by Haji Khan Mahomed Shah, Khan Bahadur, who opened the proceedings with an appropriate speech, expressing the objects of the meeting. He dwelt upon the great services rendered to the country by the Babu, and said that in his present distress he deserved the sincere sympathy of all classes and creeds.

The following resolutions were unanimously adopted, and telegrams were forwarded to Babu Surendra Nath Banerji himself, and several leading Calcutta journals :—

I. Proposed by Babu Rullia Ram, and seconded by Lalla Khunya Lall, Pleader :—"That this meeting of public bodies desires with every respect to the Hon'ble Judges of the Calcutta High Court, to express its deep regret at the sentence of imprisonment passed on Babu Surendra Nath Banerji, the able and distinguished Editor of the *Bengalee*, for his honest error of judgment. Considering the circumstances of the case, and having regard to the position of the said gentleman in society, the meeting is strongly of opinion that his unreserved apology should have been accepted ; or, at most, a fine would have met the requirements of justice."

II. Proposed by Haji Gulam Hasan, Member, Education Commission, and seconded by Khanza Usufsha :—"That the following telegram, conveying the sympathy and embodying the sentiments of the foregoing resolution, be at once sent to Babu Surendra Nath Banerji :—'We have learnt with intense of grief of your imprisonment. Your fault, which is an honest error of judgment, deserved a more lenient treatment. Please accept our best sympathy."

III. That a Sub-Committee consisting of Agha Kulbi Abid, Honourary Assistant Commissioner, Haji Gulam Hassan, Lalla Karam Chand, Honourary Magistrates, Khanza Usufshah, Babus Rull Ram, Khunya Lall, and Sheikh Mahomed Shah, Pleaders, be appointed to

take any measures that may be deemed advisable to attain the release of Babu Surendra Nath Banerji from imprisonment.

MEETING AT FYZABAD.

A special meeting of the members of the *Anjuman-i-Tehzib* of Fyzabad was held on Sunday, the 13th May, 1883, for the express purpose of considering the action of the High Court in connection with the recent Calcutta contempt case, which led to the incarceration of Babu Surendra Nath Banerji, the Editor of the *Bengalee*. The president opened the meeting by giving a brief account of the whole affair. A sharp discussion took place, and it was thought proper subsequently not to discuss the judgment of the Court as it involved questions of law—although the *Anjuman* were alive to the fact that the legality of proceedings and the propriety of the sentence were open to criticism. The next question taken up was the desirability of sending a letter of condolence and hearty sympathy on the part of the *Anjuman* to the Babu. There was a warm discussion as to the form of the letter, and no less than three forms were suggested by the members. The form proposed by the Secretary having been approved by the majority of the members. The following telegram was sent next day to Babu Surendra Nath : "The members of the *Anjuman i-Tehzib* heartily sympathise with you, and consider the proceedings of the High Court hasty and unjustifiable." The meeting then dissolved, with a vote of thanks to the chair.

MEETING AT AGRA.

A numerously attended meeting of the native inhabitants of Agra was held at the Victoria College, on Sunday, the 20th May, 1883, at which Syud Mir Imdad Ali Sahib C.S.I., was in the chair. The following resolutions were unanimously adopted :—I. That in consideration of the eminent services rendered to the country by Babu Surendra Nath Banerji, this meeting expresses its great sorrow and deep sympathy for the misfortune that has befallen him on account of an honest error in the discharge of his public duty as a journalist. II. That this meeting desires to co-operate with the commitees formed in Calcutta in connection with the case of Babu Surendra Nath Banerji. III. That a copy of these resolutions be forwarded to Babu Surendra Nath Banerji, and to the secretaries to the committees formed in Calcutta. The chairman in putting the resolutions to the vote warmly supported them, and proposed that in recognition of the services rendered to the country by Babu Surendra Nath Banerji, and as a token of the deep sympathy which the inhabitants of Agra felt for him, a suit-

able souvenir be made and forwarded to him.—This proposal was carried by acclamation.

A MEETING OF THE STUDENTS OF LAHORE.

A general meeting of the students of Lahore was held in the *Tribune* Office premises on the evening of the 26th May, 1883. The meeting was largely attended and upwards of 600 students were present on the occasion. Perfect order prevailed throughout. Dr. Nanak Chund, the President, in a few appropriate words, explained the objects of the meeting. Mr. Ruchi Ram moved the first resolution, namely "that this meeting expresses its deep and heart-felt sense of sympathy with the distinguished Indian patriot, Babu Surendra Nath Banerji." The resolution was seconded by Pundit Hari Kishen. Mr. Gura Dutt, in rising to support the resolution, made a very fine speech, and said on this sadly brilliant occasion he had mingled sensations both of joy and grief,—because they had to shed tears over the fate of the imprisoned Editor, and brilliant, because his fellow-students united in a common cause and sowed the germs which were to bring forth fruits of social and moral independence ; he further said that it was a very difficult case to decide, as here feeling and reason came into collision. The second resolution, which runs as follows, was moved by Mr. Jia Ram :—"That a telegram expressing the meeting's cordial sympathy be sent to the worthy patriot." He compared Mr. Banerji with Joseph Mazzini, and pointed out the fates of patriots from Brutus and Hampden to Louis Kussouth. Bhai Ditta Singh made an enthusiastic speech in supporting the above resolution, and asked his brethren why they were so gloomy, why they looked the picture of sunken despondency. Was Surendra Nath dead that they were grieved so much ? No. He would come out of his prison with renewed vigour and energy and finish the noble work of regeneration of his country which he has begun. When a common black crow falls into a snare, what a hubbub of noise do its fellow-birds raise, and they, his brethren, who called themselves human beings, should sit and apathetically see the incarceration in the prison of a countryman who moved heaven and earth to resuscitate his fallen country. No, never ! Punjabis would never behave thus. Five Judges sat on the Bench to pass their sentence on the patriot—one Hindu and four Christians. It was a grand sight to see a Hindu forgiving a supposed insult, and the Christians passing the sentence they did. The third resolution :—" That a Committee be appointed to draw up a letter of sympathy to be forwarded at an early date to Babu Surendra Nath Banerji," was moved by Mr. Roshun Lall, seconded by Mr. Panhu Ram, and ably supported by Pundit Lallu Ram Bajpai who expatiated fully on the unnecessarily hard sentence passed on Mr. Banerji and exhorted his

fellow-students never to give way to passion, but do everything calmly and reasonably at this time of imergency. Before the meeting broke up a song (composed for the occasion) was sung with much feeling by a gentleman of Pattiallah, named Shri Ram, and the meeting listened with rapt attention, especially to the last stanza which put forth in glowing colours the advantages which the country has derived from the beneficent British rule. Cheers after cheers followed, and he seemed to carry the audience with him. The meeting dispersed with a vote of thanks to the chair.

PUNJAB.

What the feelings of the people of the Punjab are, may be gathered from the following extracts :—

Bhai Jawahir Singh, in moving the first resolution, made a little fine speech, in which he expatiated on the eminent and distinguished services, rendered by Babu Surendra Nath to his poor country. It was impossible for him, he said, to adequately describe the extent of grief and alarm with which the unfortunate news of Surendra Babu's imprisonment had been received by the people of this province. He did not know any educated young man who had not shed tears at Mr. Banerji's undeserved misfortune. He then read out the following resolution :—

"That the residents of Lahore, assembled at this meeting, record their deep sense of grief for the sentence of imprisonment recently passed on our distinguished countryman and patriot, Babu Surendra Nath Banerji, and express their hear-felt sympathy with him in his imprisonment."

Dewan Narendra Nath seconded the above resolution, and Lalla Rama Krishna, in supporting it, spoke as follows :—Mr. President and Beloved countrymen,—Babu Surendra Nath Banerji's name does not require any introduction, as there is hardly any educated Punjabi who is unfamiliar with it. Some eight years ago when this brother of ours was first called upon by God to undertake the duties of a political missionary of his country, since that time he has been working for its regeneration with an amount of zeal and enthusiasm which has won for him the respect and esteem of his countrymen. I do not know of any other man to whom he stands second in the love of his country. It is he who has established, and is the life and soul of, the Indian Association of Calcutta,—an institution which has done immense good to the cause of our country. Even the Indian Association, Lahore, in whose building, we have assembled to-day, was established by him.

Both as a public speaker and a journalist, he has always tried to check and expose the wrongs to his countrymen. Now, gentlemen, this brother of ours, when engaged in the performance of the noble duties of his mission, committed an error of judgment, for which he has been sent to jail for two months, in spite of a candid and unconditional confession of his mistake. A man of his position, education, learning, and popularity did not deserve the punishment, inflicted on him after his submitting a suitable apology. The Judges of the High Court, Calcutta, have caused the poisonous sting of the jails being taken out by sending this great man to it. The ends of justice could very well be secured by accepting his candid apology.

Gentlemen, the grief and sorrow with which I had received the news of his incarceration was quite unprecedented,—a grief that I had never experienced in my whole life. But this was not the case with me only.

I have not up to this time come in contact with any educated Punjabi who has not received the news of his imprisonment with tears. Gentlemen, all these facts before me, and the unusually large crowd of my Punjabi brethren that I see around me to-night here has filled my heart with pleasure, and has altogether changed my grief to happiness and mourning to rejoicing.

I will let you know the cause of such a sudden change in me. Not many years ago, though being sons of, and living in the same country the Punjabis used to regard the Bengalis, and the Bengalis the Hindustanis and Madrassis as people of foreign nationalities. We never united together for a common cause and for the redress of common grievances. Now that spirit of keeping aloof from each other has died away, and now the Punjabis and the Bengalis shake hands with each other as brothers. Now the Punjabis meet in large assemblies to express their deep sympathies with a Bengali brother in his difficulties and troubles. What a happy change; and to what it is due you will naturally ask. It is justly attributable to English institutions and English laws, and the beneficent influence of that education which we have received from our wise rulers. May God cause to continue such *Raj* which has once more united separated brothers. It has united a nation that was notorious for its *phut*, and made it a compact and one nation.

And has not Surendra Babu's imprisonment contributed towards the consummation of Indian unity? It has, certainly, gentlemen, to some extent, and it is hence that I call it an occasion for national rejoicing, rather than national mourning. Though these are the bare and true facts which I have just related to you, yet the personal brotherly feelings which we bear towards Surendra Babu, work on our tender hearts, and make us exclaim with one voice: O *Bhard*. we, your Punjabi brothers, heartily feel for you.

Lala Ram Krishna took his chair amid loud cheers and acclamations. The above resolution was then unanimously passed.

Munshi Muharram Ali Chishti, Editor of the *Koh-i-nur* and Secretary to the Indian National Society, in rising to move the second resolution, spoke as follows :—

Gentlemen, we have had many occasions even before this to consider as to what affects the welfare and good of our country.

Of the many plans that have suggested themselves for carrying out that great object, that of united action has always stood first. Gentlemen, the importance of this subject cannot be exaggerated, and I need not tell you how necessary it is to be united in order to ameliorate our present condition. Of course, I do not mean by unity a unity which may exist only among Mahomedans or only among Hindus, or only among the inhabitants of one Province.

By unity I here mean Universal Brotherhood, a brotherhood which may exist among the inhabitants of all India, irrespective of caste, creed, or place of birth (Cheers). Gentlemen, I am of opinion there did not exist any effectual means of sowing the seeds of Universal Brotherhood and general sympathy before the advent of the British to this country, but since the establishment of Post Offices, the Railways and the Electric Telegraph, the most remote corners of the country have been connected with one another.

Thus we can now have hourly informations from all parts of the country, and consequently we can perfectly sympathise with our countrymen all over the land in their grievances. (Cheers). It will be, therefore, a matter of great regret, indeed, if we, under such favourable circumstances, do not try to throw away our old prejudices and superstitions in order to become one nation. We should keep steadily in view the example of our conquerors as a model for organizing our own national unity.

But in asking you to follow the example of British unity, I do by no means refer you to the action of those Anglo-Indians who are creating such a mighty hubbub over the Criminal Procedure Amendment Bill. I do by no means ask you to imitate them in hurling all manner of abuses against Anglo-Indians as the Anglo-Indians have done against the Natives without the least provocation. You can estimate that provocation only from the fact that they so far forgot their national honour that, in order perhaps to give *eclat* to their indignation, they threatened to lay down their arms.—(Laughter).

Indeed, I am not such an ignorant friend of yours that when I am setting the example of the English as a model before you, I may not advise you to show your agitation at any time in such a modest manner. (Laughter). Contrary to that, I will advise you emphatically and deliberately to bring your rights to the notice of conquerers, always having regard to gravity, moderation and loyalty of our just Government, under whose influence our condition is being ameliorated.

Gentlemen our elder brothers, the Bengalis, have worthily set an example of mutual sympathy and fellow-feeling which we had

better follow. They have always strongly felt for the Punjab, and have been the first and the foremost to defend it from what seemed to threaten its welfare and good by every possible and legitimate means within their reach.

If the Punjab have not with so much readiness and promptness exchanged their brotherly feelings, it was owing to its being backward in education. But though even at that time it theoretically regarded Bengal as its brother, yet practically treated it as a step-brother. But happily, under the influence of English education, it has learnt how to heartily co-operate.

I have shown before you the necessity of insisting on your rights and spreading universal brotherhood throughout India. In my opinion the best way of carrying out this aim is to guard and defend the dignities of those who may be able to defend and proclaim those rights ably and who take sincere interest in the welfare of their countrymen, so that other may thereby be encouraged in their zealous and enthusiastic efforts to serve their country (Cheers).

We must not be so ungrateful as to pay no respect to them, lest other well-wishers of the country may be disheartened in their sincere and noble aims.

Gentlemen, now we have an occasion before us to show our heart-felt love and sympathy towards a great patriot who has become the victim of a great calamity in pleading our national cause, (Cheers).

You will naturally ask me as to the name of the patriot who, when fighting the battles of his nation, has been subjected to a great misfortune. That blessed name is our Babu Surendra Nath Banerji. (Cheers).

The praiseworthy services rendered by him cannot be described. By his eminent services he has won the respect and esteem of his countrymen. (Cheers).

PUBLIC MEETINGS.

Meetings expressive of sympathy for the incarceration of Babu Surendra Nath Banerji in the Presidency Jail were held at Krishnagour, Bally, Connuggur, Balasore, Allahabad, Bankipur, Poona, Amritsar, Ferozepore, Barelly, Lucknow, Fyzabad, Toondla, Allygurh, Benares and Cawnpore in Upper India, at Bankipore, Mozufferpore, Durbhanga and Dinapur in Behar, at Poona in the Bombay Presidency. In Dacca, Barisal, Mymensingh, Sylhet, Pubna, Serajgunge, Balasore, Midnapore, Contai, Kakina near Rungpore, Rajshahye, Serampore, Joynuggur, Burdwan, Chinsurah, Belghoria, Shillong, Saidpur, Jamalpur, Bhatpara,

(where the Pundits met) Moorshedabad, Badyabati, Santipur, Raniganj, Krishnuggur, Kushtea, Katdaha in the Nuddea District, and at Rahuta in Bengal, Lahore, Meerut, Ajmere, Jubbulpore, Bhaugulpore, Cuttuck, Ranchi, Chittagong, Rampore Hat, Bogra, Malda and Bankurah. Even smaller places have not escaped "this blessed contagion;" for there have been meetings in Bongong, Narail in Jessore; Navagram near Manickgunge; Mahanud near Hooghly; Kirtipasa in Barisal; Abbotabad near Peshwar; Baranagore, Khurda, Satkhira, Baripur, Kalighat, Kidderpur in the 24-Pergunnahs; Tumlook in the Midnapur District; Nagarbari near Tangail in Mymensingh; Baduria; Kalia near Narail; Belpur in East Bengal; Bhastara and Basantapur. But the most noteworthy of the recent meetings were the two held at Lahore. One of these meetings was presided over by Sirdar Dyal Singh Majetia, one of the leading and most enlightened Chiefs of the Punjab. Held at Ahmedabad in the Bombay Presidency; Multan and Rawal Pindi in the Punjab; at Agra, Naini Tal and Morar in Upper India; at Chhupra and Tirhut in Behar; and at the following places in Bengal:—At Ranaghat; Jessore; Gossain Durgapur; Muragacha; Jhenida; Ampta; Bhadreswar; Dogachi in Pubna; Rajshahye; Gourifa; Halisahar; Jogati; Baradi Udibari and other places near Kushtea; Gopalganj; and Julpaiguri. Even the most backward parts of the country have been affected by this great upheaval of feeling. The people of Assam are evidently in strong sympathy with their countrymen of Bengal; for meetings have been held at Jorehat, Dhubri and Nowgong in that part of the province.

Adamware in the Punjab, Dehradoon and Mussorie in the North-Western Provinces:—Gya, Howrah, Berhampur in Tirhoot, Moulnic Bazar in Sylhet, Uluberia, Taki, Shilchar, Tinduria on the Darjeeling Himalayan Rail-way line, Joynuggur, Bunsbaria, Nabadwip (where the Pundits met), Suri in Beerbhoom, Chetla near Kalighat, Jonai, Shamnaggur, Bora, Mohestollah, Bohur in Dacca, Sreepur near Satkhira, Goila in Barisal, Sydabad in Serajgunge, Khajura Bazar near Jessore, Nashipur in Murshidabad, Harinakunda in Jhenida. Besides these, there were meetings of the students of Gouhati in Assam, a meeting of the Brahmins of Ramnugger and a joint meeting of Bonagram Library and of the Teguna Students' Association in the Dacca District.

Peshwar, Landour, and Mussorie Bazar in Northern India. In Bengal, at Chandernagore, Sadhauti, Paniharty, Nimta and Joynagore in the District of the 24-Pergunnahs, at Senhatti in Jessore, Pakuria in the District of Pubna, Palasdanga in Nuddea, Daihat in Burdwan and at Gandalpara near Chandernagore. Besides these there was a meeting of the Hindu, Mussulman and Sikh students held at Ludiana, &c., &c., &c.

